

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ONE WISCONSIN INSTITUTE, INC.,  
CITIZEN ACTION OF WISCONSIN EDUCATION  
FUND, INC., RENEE M. GAGNER,  
ANITA JOHNSON, CODY R. NELSON,  
JENNIFER S. TASSE, SCOTT T. TRINDL, and  
MICHAEL R. WILDER,

Plaintiffs,

-vs-

Case No. 15-cv-324-jdp

JUDGE GERALD C. NICHOL,  
JUDGE ELSA LAMELAS,  
JUDGE THOMAS BARLAND,  
JUDGE HAROLD V. FROEHLICH,  
JUDGE TIMOTHY VOCKE,  
JUDGE JOHN FRANKE,  
KEVIN J. KENNEDY, and MICHAEL HASS,  
all in their official capacities,

Madison, Wisconsin  
May 18, 2016  
1:38 p.m.

Defendants.

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TRANSCRIPT OF COURT TRIAL  
AFTERNOON SESSION  
HELD BEFORE U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

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Also appearing:

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20 (Proceedings called to order at 1:38 p.m.)

21

THE COURT: Are we ready?

22

MR. KAWSKI: I think so, Your Honor.

23

THE COURT: All right. Very good. Before we start, I have a question for you.

25

THE WITNESS: Yes.

1                   THE COURT: If I understand the law correctly, despite  
2 the fact that we have a 28-day residential duration  
3 requirement --

4                   THE WITNESS: Yes.

5                   THE COURT: -- if a person has moved into the state  
6 within that 28 days, so they haven't been a Wisconsin resident  
7 for 28 days, they're still entitled to vote for president and  
8 vice president. How do you handle that situation?

9                   THE WITNESS: They would complete a voter registration  
10 for after their 28-day residency is met, but they'd also  
11 complete an application for a presidential ballot, and that's  
12 not for the presidential primary; that's just for the  
13 presidential election in November. And then we would give them  
14 a sheet of paper with just the office of president and vice  
15 president on it. They would mark that as their ballot, and then  
16 two election officials would remake it onto an official ballot  
17 so they'd only be voting for those offices, and the election  
18 officials would feed the official ballot into the tabulator to  
19 be counted.

20                  THE COURT: Oh, okay. Because I was wondering whether  
21 they had to prepare yet another ballot form for just voters in  
22 that circumstance.

23                  THE WITNESS: It's on an 8 1/2 x 11 sheet of paper.

24                  THE COURT: You'd just print it up and Xerox it, and  
25 you'd have it ready in case you needed one.

1                   THE WITNESS: That's right.

2                   THE COURT: Then the official ballot gets marked, and  
3 you would only just mark the presidential --

4                   THE WITNESS: That is right.

5                   THE COURT: Okay. Good. Thank you.

6 Cross-examination.

7                   CROSS-EXAMINATION

8                   BY MR. KAWSKI:

9                   Q     Good afternoon, Ms. Witzel-Behl.

10                  A     Good afternoon.

11                  Q     How are you?

12                  A     Good.

13                  Q     You and I spoke at your deposition on April 22nd.

14                  A     Yes.

15                  Q     I am going to try and be brief and focused. It's going to  
16 be difficult because I have notes from two days and an outline.

17                  A     Okay.

18                  Q     So if I'm looking down a lot, that's why.

19                  A     That's okay.

20                  Q     And I may refer to the deposition transcript at times.

21                  Just so Mr. Spiva knows, it will be starting at page 43. That's  
22 where I'd be starting when I get to those questions.

23                  A     Okay.

24                  Q     Mr. Spiva asked you some questions about poll workers being  
25 confused about the forms of qualifying ID for voting, right?

1 A Yes.

2 Q And those poll workers are trained?

3 A Yes, they are.

4 Q And they're trained ultimately by the city.

5 A Yes.

6 Q And you're ultimately responsible for making sure they know

7 the forms of qualifying ID, correct?

8 A That's right.

9 Q So when they get it wrong, it's your fault?

10 A It's my responsibility to make sure that they don't make

11 that mistake again, yes.

12 Q Okay. So what types of steps do you take to make sure that

13 that's corrected if they do make mistakes?

14 A In Madison we require all of our election officials to

15 complete one hour of training before every election that they

16 work, and after an election I will take note of any problems

17 that I saw from the documentation prepared by the poll workers,

18 any complaints that I receive from voters, any feedback I

19 receive from the Government Accountability Board, and then I use

20 that to prepare the training for the next election. And after

21 the February primary, there were some complaints from voters who

22 thought that the poll workers took too long to figure out that

23 their nonexpiring military ID card was acceptable, and so we

24 really focused on that in our training for the April election,

25 and one of our voters who is a retired member of the military

1           provided us with examples of what each military ID card looks  
2           like. There are many different looks, and they're not all  
3           pictured on the infographic we have available from the state, so  
4           we were able to spend time in training on looking at each of  
5           those examples. That way the poll workers could become more  
6           familiar with what they might be seeing at the polling place and  
7           not have to check with the chief inspector before accepting one  
8           of those as acceptable voter ID.

9           Q       And you mentioned that you do use state materials to do  
10          your training?

11          A       Yes.

12          Q       But ultimately it's not the state's responsibility to train  
13          the City of Madison's poll workers, correct?

14          A       That's right.

15                 THE COURT: Does the state -- sorry to interrupt -- but  
16                 does the state GAB, I presume, mandate certain standards for the  
17                 training --

18                 THE WITNESS: No.

19                 THE COURT: -- or is it really left up to your  
20                 discretion to figure out what training is appropriate?

21                 THE WITNESS: It's left up to our discretion, and there  
22                 are requirements for the number of hours that chief inspectors  
23                 must receive training for every two years, and then other than  
24                 that, the requirement is that the clerk needs to make sure that  
25                 the poll workers are trained. To administer that in the City of

1           Madison, we just have a requirement that all poll workers attend  
2           one hour of training before every election that they work.  
3           Because the law keeps changing, there are new things to go over,  
4           and we want to review any trends that we saw in the last  
5           election that they need to work on improving. So we're trying  
6           to go for continual improvement. Other municipalities have just  
7           training sessions for their chief inspectors and have their  
8           chief inspectors train their poll workers where they have  
9           training sessions that are three hours long once a year.

10           THE COURT: Thank you.

11           THE WITNESS: Uh-huh.

12           BY MR. KAWSKI:

13           Q        You mentioned the training sessions, the one-hour training  
14           session for the poll workers, right?

15           A        That's right.

16           Q        Just so the Court understands the difference between poll  
17           workers and election inspectors, poll workers sit at the table  
18           and do the check-ins and things like that?

19           A        Poll workers are election inspectors, and, yes, they do sit  
20           at the table and check in voters. Chief inspectors are also  
21           election officials, but they attend a different training as a  
22           group in the City of Madison, and that training syllabus we get  
23           approved by the Government Accountability Board, so it counts  
24           toward their recertification.

25           Q        So the chief inspector is in charge of the other election

1           inspectors at a polling place?

2       A     That's right.

3       Q     And we talked in your deposition about when those one-hour  
4           trainings take place, right?

5       A     Yes.

6       Q     And you mentioned how you do some of them on weekends?

7       A     Yes, we do.

8       Q     And given that there's no absentee voting on the weekend  
9           anymore, you're now able to do those more easily or it doesn't  
10          make a difference?

11      A     It doesn't make a difference. It's the same offerings that  
12          we've had in the past. We try to vary the days of week that we  
13          offer training sessions, the time of day, and the locations in  
14          Madison. Not everybody can reach the City-County Building  
15          easily by bus. We'd prefer it if people wouldn't have to take a  
16          bus with a transfer to get to training, and that's why we try to  
17          have training sessions on the north side, the south side, east,  
18          west, and downtown. And then the training sessions that are  
19          held on the weekend are usually downtown because those are  
20          spaces that are easiest for us to reserve, but then the  
21          officials have to pay for parking when they come downtown to  
22          take the training. So for some officials, that's not really a  
23          good option.

24      Q     And you talked about you have staff that work during the  
25          in-person absentee period, correct?

1 A Yes.

2 Q And in the prior version of the law when weekend absentee  
3 voting was permitted, they would be working on the weekend,  
4 correct?

5 A That's right.

6 Q And now with no weekend in-person absentee voting, they  
7 sometimes have to work on the weekend and sometimes they're able  
8 to take time off, correct?

9 A That's right. What I do to prepare the training schedule  
10 is ask for my staff's availability for overtime hours for the  
11 weeks leading up to the election, and then when I have staff  
12 available to work nights and weekends in addition to myself,  
13 that gives me an option for another training session to be  
14 offered.

15 Q Okay. Shifting topics, Mr. Spiva asked you about voting  
16 lines for in-person absentee voting for the 2012 general  
17 presidential election, right?

18 A Yes.

19 Q And you talked about lines kind of snarling around the  
20 building and throughout your building, correct?

21 A The first floor of the building.

22 Q Okay. So the first floor of the building. But to be  
23 clear, during that time weekend in-person absentee voting was  
24 still allowed?

25 A Yes.

1 Q And what I would say is the hours were not limited yet at  
2 that time, correct?

3 A That's right.

4 Q That didn't occur until 2014?

5 A I don't remember exactly when that change went into effect  
6 in the law.

7 Q But it was not in effect for the 2012 presidential general?

8 A Right.

9 Q And you still had these lengthy lines?

10 A Yes.

11 Q Okay. When someone submits a copy of their ID card for  
12 in-person absentee, you keep it on file, right?

13 A Not for in-person absentee. In-person absentee requires  
14 that the voter present their ID, so we look at their ID. It's  
15 when the voter requests that we mail them an absentee ballot  
16 that we keep a copy of their ID on file.

17 Q Right, thank you. So when you receive a copy of that ID  
18 and you keep it for 99 years --

19 A Yes.

20 Q -- if that person changes their registration, they don't  
21 have to submit a copy of the ID again?

22 A If they change their -- if they reregister, then they're  
23 supposed to submit another copy of their ID. How we catch that,  
24 I'm not sure yet, but we'll figure that out with the WisVote  
25 program.

1 Q Only if they have to change their registration do they have  
2 to submit another copy of ID, correct?

3 A That's right.

4 Q Otherwise you have it on file already?

5 A That's right.

6 Q Okay. We talked in your deposition about what are the  
7 bottlenecks for in-person absentee voting, and I asked you the  
8 question, what are the two biggest bottlenecks for in-person  
9 absentee voting, right?

10 A Yes.

11 Q Referring to starting at page 43 of your deposition, I  
12 asked you what the number one bottleneck is, and you said --  
13 tell me if I'm wrong, but I think I will read it here -- "The  
14 slowness of the state's new voter registration system would be  
15 the biggest bottleneck."

16 A Yes.

17 Q I said, "Okay." And I was trying to figure out what you  
18 meant by that, a computer system, not any change in the law?

19 A Right. That's a new computer program that we have for  
20 statewide voter registrations.

21 Q And the computer system was creating delays because of how  
22 I think -- how it populated addresses of people when you entered  
23 them or something?

24 A Right. I'm not an expert in any way on computer  
25 technology, but when a voter registers and they're registering

1 at an address where somebody isn't currently also registered at  
2 that address, we need to search for that address in the system,  
3 and then if it's not out there as a possible address to just  
4 validate them, we need to create that address in the system,  
5 make sure that its placement is correct on a map that is shown  
6 on the screen, make sure it has a district combination code and  
7 then activate it, and then we can go on with the voter  
8 registration, and the address portion is slower than my  
9 patience.

10 Q And so this system is called WisVote?

11 A Yes.

12 Q And the slowness has nothing to do with the proof of  
13 residency requirement per se?

14 A No. This is the computer system that we have to use.

15 Q And that was the number one bottleneck you identified for  
16 in-person absentee voting?

17 A That's right. This past February into April election, that  
18 was the one thing that slowed down our line of voters the most.

19 Q Okay. And then the number two bottleneck was the voter ID  
20 law, correct?

21 A Right.

22 Q And specifically you talked about how voters might not  
23 understand what IDs are acceptable?

24 A Right.

25 Q That they might not be clear when they go to the desk to

1 check in which ID is allowed?

2 A Right.

3 Q And I asked you, well, isn't there significant signage  
4 around there; remember that?

5 A Yes.

6 Q You said sometimes people are on their phones or they're  
7 reading a book, not paying attention to the signage?

8 A Yes.

9 Q There's really nothing you can do for someone who is not  
10 paying attention, right?

11 A There is nothing that I could do without walking up and  
12 talking to each voter, but as we talked about in the deposition,  
13 I was answering the phone in the office.

14 Q That's just not reasonable to require you guys to walk up  
15 to everyone and tell them what IDs are allowed?

16 A Right. Without enough people to do so.

17 Q We talked about the process of checking someone's ID, and  
18 you testified that it takes about 40 seconds to do that?

19 A Yes.

20 Q And before Act 23, it took about 20 seconds to check  
21 someone in, right?

22 A I don't know that I have timing on checking in at the  
23 counter during absentee voting, but prior to the new  
24 regulations, the voter would step up to the counter, give their  
25 name and address, but there are other changes, as we talked

1       about, that had gone into place as well. Years ago the voter  
2       also filled out a form that they would hand to us in addition.  
3       So there have been numerous changes through the years; some that  
4       would speed things up, and then others that did not.

5       Q       And Act 23 created two main changes for the check-in  
6       process, right? And those being showing qualifying ID and  
7       signing the poll book?

8       A       Are you still talking about in-person absentee voting --

9       Q       No, I'm talking about election day.

10      A       Oh, at the polls.

11      Q       Yes.

12      A       Yes. At the polls there's a requirement that you sign the  
13       poll book as a voter, and prior to that you also show your ID.

14      Q       Okay. And so, again, talking about at the polls on  
15       election day --

16      A       Yes.

17      Q       -- you testified that now it takes 40 seconds about to  
18       check someone in; is that right?

19      A       It can take as few as 40 seconds. It can take about a  
20       minute or over a minute. So we did some timing on this in  
21       February at our polling places, and the fastest interactions  
22       that we had at the poll book table were about 40 seconds. There  
23       were others that it was over a minute.

24      Q       Okay. And prior to that, again, it took about 20 seconds?  
25       I think that's what you testified to.

1       A     Yes.

2       Q     Okay. And so I asked you could you break out how much time  
3            was added by Act 23 in terms of signing the poll book added time  
4            and checking ID added time; do you recall that?

5       A     And I cannot break that out for you. When we did our mock  
6            elections, we were doing the mock elections to figure out how to  
7            implement the law while shortening the lines as much as  
8            possible, and so we were looking at the law as a whole and not  
9            breaking it out into signature versus showing ID.

10      Q     So you can attribute of that extra added time how much of  
11           it goes to showing and checking the ID, correct?

12      A     No, because we did our timing as a whole, the whole  
13           process.

14      Q     So some of that time is obviously then attributed to the  
15           signing the poll book part?

16      A     Yes. That was part of the new law.

17      Q     And that part can create slowdown as well because the poll  
18           book is sort of upside down facing?

19      A     Our experience is that the voter signing the poll book  
20           upside down is not confusing. That works out fine. It probably  
21           would be more disruptive for the poll workers to keep flipping  
22           the poll book back and forth during the day, so signing the poll  
23           book upside down actually is helpful for the poll workers. They  
24           just move the poll book forward and then slide it back without  
25           messing with the binding and having the poll book fall apart.

1       Q     I guess what I meant is that the person's name is upside  
2            down to the election official who is sitting there with the poll  
3            book, right?

4       A     The person's name and address are facing the poll worker.  
5           The box where the voter signs is still facing the voter. The  
6           voter just signs right within that box. The signature itself is  
7           upside down to the poll worker. I don't know if that's what  
8           you're referring to.

9       Q     I'm just getting at do sometimes poll workers struggle  
10          pointing out which box to sign in?

11      A     Actually, the Government Accountability Board when they set  
12          this up put numbers for each line, and so I haven't had any  
13          feedback that the signature boxes are confusing at all.

14      Q     Okay. But you have seen instances where people have signed  
15          in the wrong box, correct?

16      A     We have.

17      Q     How frequent does that happen?

18      A     Every so often, and we tell the poll workers to document  
19          that on their inspector statement. If they notice that, they  
20          just make note of it. They don't need to call the voter at home  
21          and have them come back into the polling place.

22      Q     You talked to Mr. Spiva about provisional ballots?

23      A     Yes.

24      Q     And you said that for the April 2016 election, there were  
25          123 provisional ballots issued for voter ID reasons in Madison?

1 A Yes.

2 Q And I asked you at your deposition what were the total  
3 number of ballots cast in Madison; do you remember that?

4 A Yes.

5 Q How many was it?

6 A It was over 118,000.

7 Q So --

8 A And that's for April.

9 Q Right, just for April. I'm not asking you to do the math  
10 on the stand, but I did do the math, and that's .1 percent of  
11 all ballots cast were provisional.

12 A Yes. For the campus wards it was .14 percent.

13 Q Okay. So you did do the math?

14 A Yes, but I couldn't have come up with that up here on the  
15 stand. I didn't do the math right now.

16 Q Okay. How many provisional ballots did you order for the  
17 April 2016 election?

18 A A provisional ballot isn't a separate print job. It's a  
19 regular ballot. On the back of the ballot, the poll workers  
20 write the provisional voter number, and there's a stamp we give  
21 them to stamp the relevant section of the state statute. So  
22 it's not that we print separate provisional ballots. We also  
23 send about 20 provisional envelopes to each polling place that  
24 they have available that they could use for any election.  
25 They're not election-specific.

1 Q So for each polling place they had a total of 20 envelopes?

2 A They did.

3 Q And you said there were 87 polling places?

4 A That's right.

5 Q So how many total envelopes about did you prepare for

6 provisional ballot purposes?

7 A In addition to those that we sent to the polling places, we

8 have thousands and thousands in our office printed when voter ID

9 first went into effect. So I don't remember how many we printed

10 at that time, but we're still using those envelopes.

11 Q And so you sent 20 to each polling place, and they didn't

12 use them all?

13 A That's right.

14 Q And, you know, doing quick math, you sent out about 1,600

15 provisional envelopes?

16 A Yes.

17 Q Would it be fair to say you were anticipating at least

18 1,600 provisional ballots?

19 A No.

20 Q No. Okay. Here is where we get to my notes, and it's

21 going to be a lot of miscellaneous, I think.

22 A That's fine.

23 Q You talked about election observers with Mr. Spiva?

24 A Yes.

25 Q And I just want to be clear that when you're talking about

1           the blue tape area where they stand, that that is an area that  
2           election inspectors, the chief inspector, can order the  
3           observers to stand in that area?

4         A    That's right.

5         Q    And that is not a change in the law, right?

6         A    A few years ago there was a change in the Government  
7           Accountability Board rules for observers to actually have a  
8           brochure that is handed to the observer with all the rules  
9           spelled out.

10        Q    I guess what I mean is the chief inspector could always  
11           order the observers to stand in a certain spot?

12        A    Yes, have a designated area for the observers. A few years  
13           ago we started designating that with blue painter's tape on  
14           election morning because feedback from the poll workers was that  
15           the observer area tended to move itself forward during the day,  
16           so that was our solution.

17        Q    Okay. And it's always been the case that the chief  
18           election inspector could order a misbehaving observer out of the  
19           polling place?

20        A    That's right.

21        Q    You talked in your direct exam about taking pictures at the  
22           polling place and zooming in with a cell phone?

23        A    Yes.

24        Q    Cameras are not allowed for observers, correct?

25        A    The observers can't take pictures during voting hours.

1       They could take pictures as the polls are being closed after  
2 voting is complete. They are allowed to use their cell phones  
3 during the day while voting is taking place, but not take  
4 pictures unless they're a member of the media.

5       Q     So a nonmedia election observer who is on their cell phone  
6 zooming in, what do you do with that?

7       A     Well, the question that came up to me from a number of  
8 chief inspectors was that they were concerned about when  
9 observers are holding up their phone, whether they're zooming in  
10 to see personal information, and so I have told them they need  
11 to walk by behind the observers to see exactly what's taking  
12 place.

13      Q     But that could, I guess, be construed as using the cell  
14 phone inappropriately for camera purposes?

15      A     If they're taking a picture. If they're not taking a  
16 picture, they're allowed to use the cell phone in the polling  
17 place, and sometimes they're texting or they're checking  
18 something on the internet, and that's perfectly fine.

19           THE COURT: So you're saying they're using it more like  
20 a binoculars instead of a camera. They're not taking the  
21 photograph, but they're using the zoom feature to get a closer  
22 look.

23           THE WITNESS: Right. That's the concern that's been  
24 brought up to me by some chief inspectors.

25           THE COURT: Okay. So could you sanction or discipline

1           or control an observer for that behavior?

2           THE WITNESS: The observers would have to catch them  
3           doing that, and then first we'd try to just talk to the observer  
4           and tell them that that's personal, confidential information  
5           that can't be disclosed and they can't do that, and then if they  
6           were to do it again, they'd be told to leave the polling place.

7           THE COURT: Okay.

8           BY MR. KAWSKI:

9           Q       You talked about different proof of residence documents,  
10          right?

11          A       Right.

12          Q       And in March of 2016 a new document was added to that list  
13          which isn't -- what is it?

14          A       It's an intake document for a care facility. So assisted  
15          living or a nursing home wouldn't necessarily have a lease with  
16          their residents, but they would do a contract or some sort of an  
17          intake document when somebody moves in, and that could be used  
18          to prove an address.

19          Q       And that was an addition that the Wisconsin legislature  
20          made to the law?

21          A       That's right.

22          Q       And what population would that assist?

23          A       Those who are living in care facilities. So it might be a  
24          nursing home or assisted living facility or CBRF facility.

25          Q       And is that a population you would have potentially seen

1           using the corroboration option in the past?

2       A     Not necessarily. They in the past probably would have  
3           registered during open registration and not given a document.  
4           In the past we had seen more married couples using the  
5           corroboration option.

6       Q     Okay. You talked about the -- and I don't remember -- it's  
7           the certified housing list for students and the issue of  
8           confirming citizenship, correct?

9       A     Right.

10      Q     It's not that students have to use that certified housing  
11           list to prove their residency, correct?

12      A     No. They could use any document on the list of acceptable  
13           documents.

14      Q     You talked about sending absentee ballots overseas?

15      A     Yes.

16      Q     And the complications that can create?

17      A     Right.

18      Q     I'm wondering, have you ever sent a ballot using a  
19           commercial carrier?

20      A     No, we do not. We use U.S. mail.

21      Q     Okay. And why do you use U.S. mail only?

22      A     Because that is what we are able to use through our mail  
23           room. We take the tray of absentees down to the mail room.  
24           They are able to seal those envelopes for us saving us paper  
25           clips -- or paper cuts on our tongues, and then they also will

1       put the postage on and get it to the post office for us, so we  
2       don't have to deal with any of that administration.

3       Q       The reason I ask is Mr. Spiva asked you whether it would be  
4       impossible to get certain people a ballot in time, and as I was  
5       sitting here, I went online and put in DHL for Ecuador and DHL  
6       for -- the other country was -- Ecuador is the one I remember.  
7       Do you acknowledge that a commercial carrier like DHL can  
8       deliver to countries like Ecuador?

9       A       I have no information on DHL. We'd have to get special  
10      permission from the finance department if we were to use a  
11      service other than what we have available through our payment  
12      options with the county.

13      Q       You would acknowledge though that it may be possible to get  
14      a ballot to a voter in another country using a commercial  
15      carrier?

16      A       It may be.

17                    MR. KAWSKI: Okay. I have no further questions.

18                    THE COURT: Any redirect?

19                    MR. SPIVA: Just a couple, Your Honor.

20                    REDIRECT EXAMINATION

21                    BY MR. SPIVA:

22      Q       You probably haven't done the comparison, but would e-mail  
23      be cheaper than DHL to send the ballots overseas?

24      A       We have no postage costs on e-mail.

25      Q       Okay. And what impact on costs do you think it would have

1           if you were sending international -- absentee ballots  
2           internationally through commercial carriers?

3       A      I have no idea.

4       Q      You were asked some questions about the observers?

5       A      Yes.

6       Q      And you mentioned that people were using, I guess, the  
7           cameras, or the phones rather, as binoculars?

8       A      Yes.

9       Q      If someone were to snap a picture even though they're not  
10          supposed to, would there be a way to necessarily tell that they  
11          were doing that unless somebody was standing right behind them?

12      A      I don't know. It would, I guess, depend on the cell phone  
13          that they're using. My cell phone sometimes lets off a flash;  
14          sometimes it doesn't. So I don't know.

15      Q      And if they were taking a video, would there be a way to  
16          tell that unless somebody was standing behind them?

17      A      I don't know of a way to tell unless you're standing behind  
18          the observer.

19      Q      And then you were asked some questions about, you know,  
20          whether it was your responsibility to do certain training.  
21          Probably an obvious question, but the voter ID law is a state  
22          law, correct?

23      A      Yes.

24      Q      And you didn't have a need to do any training on voter ID  
25          before the voter ID law was passed by the state, I take it?

1       A     No. We did training every election since I became clerk.  
2           I have required all officials to attend training every election,  
3           and it would be on whatever we have determined that they need  
4           the most work on to improve.

5       Q     And does the state have some responsibility for training  
6           the clerk of the city?

7       A     The state does provide webinars that we watch, and they  
8           offer those pretty frequently -- I'd say at least once a  
9           month -- and then we try to catch when they're going to be held  
10          to watch and find out if they have any new guidance for us, and  
11          then we'll include that information in the training that we do  
12          for our local officials.

13      Q     Do they have any oversight responsibilities, say, over you,  
14          GAB, since it's still in existence? Is there some kind of  
15          oversight responsibility over the localities, the locality  
16          clerks?

17      A     They give us direction on how to do things and guidance.  
18          They also provide that guidance and direction to the county  
19          clerks.

20      Q     And is that guidance -- is some of that guidance binding in  
21          that it's mandatory?

22      A     They do have rules that we need to follow, yes.

23      Q     And does the state have responsibility for implementing at  
24          least state and federal elections?

25      A     Yes. They are the ones who certify the elections in the

1 end, and we are required as municipalities to report certain  
2 information to them within a deadline after each election.

3 MR. SPIVA: Thank you very much. I don't have any  
4 further questions.

5 THE WITNESS: Thank you.

6 THE COURT: Just one quick follow-up. Before the  
7 change that eliminated the weekend voting, there still was a  
8 window within which you could do in-person absentee voting?

9 THE WITNESS: Before they --

10 THE COURT: Before they eliminated the weekend voting  
11 and then set the parameters for your weekday hours that you  
12 could --

13 THE WITNESS: Right. We could have in-person absentee  
14 voting once we had ballots in the office, and then that would  
15 end the day before election day.

16 THE COURT: Okay. So could you -- was it totally  
17 within your discretion to set whatever hours you thought were  
18 appropriate?

19 THE WITNESS: Yes. And then we would publish those  
20 hours in the newspaper.

21 THE COURT: So you could do 24/7 if you wanted to --

22 THE WITNESS: We could.

23 THE COURT: -- before that. Okay. Thanks.

24 THE WITNESS: Thank you.

25 THE COURT: Okay. Thank you very much. You get the

endurance prize so far. I hope your record stands unchallenged.

(Witness excused at 2:10 p.m.)

THE COURT: Okay. Next witness.

MR. SPIVA: Your Honor, plaintiffs call Renee Gagner.

**RENEE GAGNER, PLAINTIFFS' WITNESS, SWORN,**

DIRECT EXAMINATION

BY MS. WILSON:

Q      Good afternoon.

A Good afternoon.

10 Q Would you please state your name and spell your name for  
11 the record?

THE COURT: Ms. Wilson, would you turn your mic just a little bit toward you? Thanks.

THE WITNESS: Renee Gagner, R-E-N-E-E G-A-G-N-E-R.

BY MS. WILSON:

Q And you're one of the plaintiffs in this case, right?

A Yes.

Q      And how old are you?

A 23.

Q      And where do you live?

A I live in Milwaukee, Wisconsin.

Q      And how long have you lived there?

23 A I have lived there for a little over a year, since late  
24 March of 2015.

Q      And where do you work?

1 A I work for SEIU Healthcare Wisconsin.

2 Q And what is SEIU?

3 A The Service Employees International Union.

4 Q And what do you do for them there?

5 A I am a staff representative/organizer.

6 Q And are you also a recent college graduate?

7 A Yes. I graduated in 2014.

8 Q And where did you go to school?

9 A Beloit College.

10 Q And is Beloit a private school, state school? What kind of  
11 school is it?

12 A It's a private liberal arts school.

13 Q And what was your degree in?

14 A I had a Bachelor of Arts in political science and  
15 psychology.

16 Q And did you study election law in political science?

17 A I did study it a little bit though I think my interaction  
18 with it was more doing some student organizing on campus than in  
19 my coursework.

20 Q Okay. We'll talk about that in just a minute. Are you a  
21 voter?

22 A I am.

23 Q And how long have you voted?

24 A I have been voting since I was 18, which was the fall  
25 election in 2010.

1 Q And did you vote in the last election?

2 A I did.

3 Q And when was that?

4 A That was in early April of this year.

5 Q And why do you vote?

6 A I vote because I think it's very important to be involved  
7 in the political process. Our elected officials influence a lot  
8 of aspects of our everyday lives.

9 Q And where did you live when you were in school?

10 A I lived in the dorms on campus.

11 Q And were you in the dorms the whole four years?

12 A With the exception of a semester being abroad, yes.

13 Q And did you have one sort of single address because you  
14 lived at the school or did you have different addresses over the  
15 years?

16 A Each dorm building was considered a separate -- sort of a  
17 separate address. We were all under 700 College Street as the  
18 college's address, but each dorm building was kind of its own  
19 address, and we would need to reregister when we moved  
20 buildings.

21 Q So you registered when you were 18 to vote, right?

22 A Yes.

23 Q And do you remember the address you used?

24 A 700 College Street, Aldrich Hall, Beloit, Wisconsin 53511.

25 Q Okay. That's very good.

1 A Thanks.

2 Q I actually meant did you register at school or at home?

3 A At school, yes.

4 Q And so how many times when you were at school did you have  
5 to register or reregister?

6 A I had to reregister if I were home in the summer and there  
7 were elections in the summer, which did happen at least two  
8 summers, I believe. I would reregister at home if I had been  
9 there for more than whatever the residency requirement was at  
10 the time, and even if I didn't reregister at home during the  
11 summer, I would need to reregister if I had moved to a new  
12 building on campus in the fall.

13 Q And did having to register and reregister, did that have  
14 any impact on you as far as your voting went?

15 A I was always able to do it and, you know, this is  
16 something that I'm pretty passionate about, so I made sure that  
17 I was able to reregister and made plans to do so, but it was  
18 more work than, you know, it would have been if we had just  
19 voted under the same address across campus.

20 Q And did you have other students, college students of yours  
21 that had the same issue in terms of registering and then having  
22 to reregister?

23 A Yes.

24 Q Now, do you have a preferred way of voting that you like to  
25 vote?

1 A I prefer to vote in-person absentee.

2 Q And why do you prefer to vote in-person absentee?

3 A I'm often busy on election day either encouraging and

4 helping others to vote or just work or in class and doing my

5 normal day-to-day activities.

6 Q And when you voted in-person absentee, did you ever vote on

7 the weekends?

8 A I don't recall ever voting on the weekends.

9 Q So you know there's been a change, that the weekends have

10 been eliminated, right?

11 A Yes.

12 Q So that's not going to have any impact on you at all

13 because you never voted on the weekends?

14 A It does have an impact on me.

15 Q How so?

16 A Even though I never used it when I was a student because my

17 schedule did allow me to go and vote on a weekday during

18 business hours where I maybe had an hour or two hours in between

19 classes to do that, I now work during business hours and

20 sometimes even longer than that, and it's a lot more difficult

21 for me to, you know, get down to early vote during that time.

22 Q We talked a little bit about your major.

23 A Uh-huh.

24 Q But do you feel like you're familiar with Wisconsin's

25 voting laws?

1 A Yes, I would say so.

2 Q And how is it that you're familiar with them?

3 A I became familiar with them primarily through helping other  
4 students to vote when I was on campus.

5 Q And what kinds of activities did you do to help other  
6 students to vote?

7 A So I sort of worked to -- along with some of my peers to  
8 educate students about voting, make sure they knew what was on  
9 the ballot and when the elections were as well as what they  
10 needed at the polls, if anything, and where to go vote.

11 Q And how did you do that? Did you just -- did you volunteer  
12 somewhere? How did you do that?

13 A I did that primarily through the College Democrats in  
14 Beloit.

15 Q And what is the College Democrats?

16 A It's an organization that, you know, it was at least  
17 partially affiliated with the state party and works to support  
18 and elect Democratic candidates, but we also did have a focus on  
19 just more general voter education, so if we were talking to  
20 someone about the election and they were a Republican, we would,  
21 you know, still tell them when and where to go vote.

22 Q Okay. Would you also register voters as part of the  
23 College Democrats?

24 A Yes. Some of us were Special Registration Deputies.

25 Q And when did you -- were you a Special Registration Deputy?

1 A Yes.

2 Q And when did you become a Special Registration Deputy?

3 A I do not exactly recall, but I believe it would have been  
4 sometime around the spring of -- actually I'm not sure. Either  
5 in 2011 or 2012.

6 Q And in what area were you a Special Registration Deputy?

7 A I was a Special Registration Deputy in the City of Beloit  
8 and the City of Milwaukee.

9 Q And were you a special deputy in your hometown?

10 A No.

11 Q And why not?

12 A So I had initially tried to become a Special Registration  
13 Deputy when living in my hometown in 2008, and that was when one  
14 could still become a statewide deputy, and at that time I was  
15 not 18 so I was not allowed to do it. And then later on I would  
16 have liked to become a Special Registration Deputy for the City  
17 of Waukesha, but the clerk really did not provide trainings for  
18 people to be able to do that.

19 Q And you can't be a Special Registration Deputy without the  
20 training?

21 A Yes.

22 Q And are you currently a Special Registration Deputy?

23 A No, but I would like to be.

24 Q And what's preventing you from being one?

25 A I need to arrange my schedule to attend a training again.

1           Q     Okay. Now, did you do any other activities when you were  
2       in college to help people to vote?

3           A     Well, as a Special Registration Deputy, I did a lot of  
4       voter registration. I also worked with the College Democrats  
5       and with other organizations on campus to make sure that  
6       students knew where our polling location was, that they knew  
7       when the elections were, what was on the ballot, and things of  
8       that nature.

9           Q     And how would the College Democrats go about finding  
10      students or directing them?

11          A     We would try to reach them in a variety of ways. So we  
12      would hang flyers around campus, and we would use kind of an  
13      online bulletin board that we had access to. We would sometimes  
14      just sort of do what's called tabling, so stand outside at a  
15      table outside of the cafeteria and talk to students coming in  
16      and out or, you know, even talk to students in another location  
17      on campus. And then we would do what's called dorm storming the  
18      night before each election where we would put flyers either on  
19      or under the doors of all the dorm rooms on campus and then sort  
20      of draw chalk arrows toward the polling location to guide  
21      students there.

22          Q     Literally chalk on the ground?

23          A     Yes.

24          Q     Okay. What was your experience when you were working to  
25      help students to vote and to register them?

1       A     My experience was that students were definitely interested  
2     in registering and voting, but they were kind of confused by the  
3     process. We did have a large number of students who did not  
4     grow up in the State of Wisconsin, and obviously voting in, you  
5     know, Oregon or even Illinois is going to be different than  
6     voting here in Wisconsin. So it took a lot of work to make sure  
7     that they were informed about the process.

8       Q     Okay. And did you -- were you ever involved in being an  
9     observer or a poll watcher?

10      A     I was an observer and kind of led a team of observers in a  
11     special election in the summer of 2011.

12      Q     And that was while you were still in school?

13      A     Yes, but that was not in Beloit. That was in the greater  
14     Milwaukee area.

15      Q     Okay. And why did you do observing?

16      A     I did observing partially because it was just part of the  
17     job I was doing at the time, but I think the reason that our  
18     organization was doing observing was, for one, just to sort of  
19     see how the turnout was looking in some targeted areas to make  
20     sure that we were, you know, getting voters out to the polls in  
21     those areas and also because we had heard of some concerns,  
22     especially with all the changing laws, and wanted to make sure  
23     that everybody was being given good information about voting  
24     when they went to go vote.

25      Q     Now, you said it was through the job that you had. What

1 job was that?

2 A I was working for We Are Wisconsin.

3 Q Okay. And what is We Are Wisconsin?

4 A It's an organization kind of made up of I think various  
5 labor unions and sort of other progressive groups who were  
6 coming together to work on some of the recall elections in  
7 Wisconsin.

8 Q Okay. And when -- you talked about problems that you had  
9 heard of because of the changing laws. Can you tell me a little  
10 bit more about that?

11 A I think, and I don't recall exactly, you know, what  
12 anecdotes we were told about, but we had heard that there was  
13 just more confusion going on because there had been so many  
14 changes to the law in such a short period of time and that we  
15 wanted to make sure that that confusion was not preventing  
16 people from voting.

17 Q That actually reminds me of a question I should have asked  
18 you a little earlier. When you were working with the students,  
19 did you find that they were confused about the -- how to  
20 register?

21 A I think a little bit. Because we were SRDs, it was easy  
22 for us to walk them through that process very directly by  
23 actually sitting down and filling out the form with them or, you  
24 know, walking them through that form, so I think it would have  
25 been much more confusing for them if they did not have access to

1           SRDs.

2       Q     You said you voted at 18, right?

3       A     Yes.

4       Q     And the first time you voted, did you have to show a photo  
5           ID?

6       A     No.

7       Q     But at some point that changed, right?

8       A     Yes.

9       Q     And then you had to show a photo ID?

10      A     Yes.

11      Q     How did you feel about that?

12      A     I felt a little frustrated about it, so, you know, even  
13           though I do have access to a photo ID because I do have a  
14           driver's license, which I know is not the case for everybody,  
15           you know, I had previously been able to vote with my signature.  
16           And, you know, I filled out a form with my legal information,  
17           including my Social Security number, and signed off on that  
18           form, and then went and signed off that I was who I was and the  
19           state believed me, and I don't see any reason for that to  
20           change.

21      Q     But what about that photo ID makes -- it gives more  
22           integrity to the system?

23      A     I don't think it really does. I don't think there was any  
24           issue with the integrity of the system before the photo ID law  
25           was in place, and I think the most integral part of the

1           integrity of the system is making sure that everyone has access  
2           to voting.

3       Q     Okay. Now, you said that you were an observer. That was  
4           in Milwaukee, right?

5       A     Yes.

6       Q     Okay. And did you have an opportunity to observe any  
7           issues with observers while you were being an observer in  
8           Milwaukee?

9       A     So the one issue that we ran into -- I did not witness the  
10          full problem. This is when I was kind of supervising a group of  
11          observers, but we had a polling location in sort of a heavily  
12          African-American part of Milwaukee way in the northwest corner,  
13          and I was called in to sort of assist because at this location  
14          there was a person there, I don't know who she was or what  
15          organization she was from, but she was kind of standing in the  
16          lobby of the building and telling voters that they needed ID,  
17          and we wanted to make sure that that did not continue because  
18          the voter ID law was not in effect at that time.

19       Q     So what did you do?

20       A     So I talked to the volunteers who were there and made sure  
21          that they were speaking to the poll workers at the location to  
22          address it, and then I also went over there just to assist them  
23          in that, and I think the woman who was there had left -- ended  
24          up leaving shortly after I arrived, so I didn't see her  
25          interacting with any voters, but I did see her there.

1 Q Okay. Has there ever been a time when you wanted to vote  
2 but you were unable to vote?

3 A Yes.

4 Q I'm not talking about the time when -- before you were 18.

5 A So in the spring of 2013, I studied abroad that semester,  
6 and I had ordered or, you know, requested an absentee ballot to  
7 be sent to my parents' house because I wasn't really sure, you  
8 know, what the situation would be like when I got over there. I  
9 don't think I was told my address until I arrived in Austria, so  
10 I couldn't really make arrangements before I went over there to  
11 have a ballot sent directly to me. So I did ask my parents to  
12 send that to me once it was at their house, and it did not  
13 arrive to me until a few days after the election.

14 Q And how did you feel about that?

15 A I was a little frustrated. It was a spring election. It  
16 was, you know, not one of the big, flashy elections, but I still  
17 like to make sure that I can vote in every election.

18 Q And is there anything that you think that could have been  
19 in place that might have helped in that situation?

20 A I think if I had access to vote by e-mail or, you know, in  
21 another digital format, that that would have helped me.

22 Q Okay. Have you ever used the mail-in absentee ballot?

23 A Yes.

24 Q And when did you -- was that the time you just told us  
25 about, Austria?

1       A     There were a couple of other times as well. So I did use  
2           it -- so after I first graduated college, I was working a job  
3           temporarily in another state, down in Arkansas for about six or  
4           seven months, and at that time I did have an absentee ballot  
5           mailed to my address down there and did fill that out and sent  
6           it back to Wisconsin. And then in last spring, so the spring of  
7           2015, when I moved to Milwaukee from Waukesha, I had not been  
8           living in the city for the full 28 days when the election rolled  
9           around, so I did need to still vote at my parents' address in  
10          Waukesha and did use a mail-in absentee ballot to do that.

11       Q     So the residency requirement change, that impacted you?

12       A     Yes. If it had stayed at I believe it used to be ten days,  
13          I would have been able to vote in Milwaukee.

14       Q     But you were still able to vote, right?

15       A     Yes.

16       Q     And did you have any issues with using the mail-in ballot?

17       A     It took a little bit longer I think than if I had just been  
18          able to vote in-person absentee in Milwaukee because I did need  
19          to gain access to a printer to actually print the form to  
20          request that ballot, and then, you know, take a small amount of  
21          extra time to mail that in. I wouldn't say it was a significant  
22          impact but a slight one.

23       Q     And so why don't you use the mail-in ballot all the time?

24       A     I prefer to go in in person and make sure that my ballot  
25          gets there, first of all, since I can actually see it being

1           handed to the clerk. Yeah, so I honestly just prefer that, and  
2           it's easier for me to go in in person than to try to print the  
3           form and continue to request a ballot each time.

4           Q       So might be obvious because you work for the College of  
5           Democrats, but you're a Democrat, right?

6           A       Yes.

7           Q       And you've also done some work, not just voter  
8           registration, poll watching, but you've worked for some  
9           campaigns, right?

10          A       Yes.

11          Q       Okay. There's been a change in straight-ticket voting.  
12          You understand that, right?

13          A       Uh-huh.

14          Q       And has that had any impact on you in any way?

15          A       I did straight-ticket vote when it was available to me,  
16           which I believe was only the fall election in 2010, and I would  
17           continue to do that if it was accessible to me. And I think  
18           just beyond me personally, it's much easier when I'm helping a  
19           voter who, you know, doesn't read about elections quite as much  
20           as I do, when I'm assisting them in sort of preparing to go to  
21           the polls, you know, if I can just tell them, you know, if they  
22           tell me they want to vote Democrat, I can tell them, that's  
23           great; there is a box you can check for that. That's much  
24           easier than having to assist them in making sure that they know  
25           all of the elections to look for on what can be a confusing

1 ballot.

2 MS. WILSON: Okay. Thank you very much.

3 THE WITNESS: Uh-huh.

4 THE COURT: Cross-examination.

## CROSS-EXAMINATION

6 BY MR. JOHNSON-KARP:

7 Q Good afternoon, Miss Gagner. My name is Gabe Johnson-Karp.  
8 You mentioned that it was not a significant impact when you had  
9 to mail -- use an absentee by mail; is that correct?

10 A For me personally, yes. I do have access to a printer at  
11 work, and my employer did allow me to print out that form, but I  
12 do understand that for people who don't necessarily have that  
13 access, it may be a greater impact to have to either go  
14 somewhere to find a printer or pay to use one.

15 Q But for you not a significant impact?

16 A No. I wouldn't say that.

17 Q Are you aware you can e-mail or fax a request for an  
18 absentee ballot?

19 A I was not aware of that.

20 Q And are you aware that you can write to your clerk to  
21 confirm whether your ballot was received?

22 A I also was not aware of that actually. Though I do know  
23 that you can access that online.

24 Q You're aware of the My Vote website?

25 A Yes.

1 Q And you can confirm whether your ballot was received?

2 A Uh-huh.

3 Q Or whether it was sent to you?

4 A Yes.

5 Q Okay. And you mentioned straight-ticket voting. The  
6 elimination of straight-ticket voting hasn't prevented you from  
7 voting, has it?

8 A No, it hasn't prevented me from voting, but I don't see any  
9 reason for it to happen.

10 Q And you've still been able to vote for the candidates of  
11 your choice?

12 A Yes.

13 Q You've still been able to locate the candidates of your  
14 choice on the ballot?

15 A Yes.

16 Q You mentioned being a Special Registration Deputy; is that  
17 correct?

18 A Uh-huh.

19 Q You are a Special Registration Deputy in Milwaukee right  
20 now?

21 A I am not currently, but I would like to be.

22 Q Okay. And you've taken the certification in the past?

23 A Yes, both in Beloit and Milwaukee.

24 Q And you've been able to complete that?

25 A Yes.

1 Q And you would like to be a deputy in other municipalities?

2 A I would primarily like to be a deputy in Milwaukee again,  
3 but I do in my work travel to different municipalities  
4 throughout the state and would like to be deputized in those as  
5 well.

6 Q And you mentioned that the clerk in Waukesha has made it  
7 difficult to become a Special Registration Deputy; is that  
8 correct?

9 A Yes. I don't believe there are any Special Registration  
10 Deputy trainings offered in the City of Waukesha, at least not  
11 when I lived there.

12 Q Other than Waukesha, is anything preventing you from  
13 becoming a Special Registration Deputy for another municipality?

14 A I think time is. You know, kind of depends on how many  
15 municipalities I'm looking to be a Special Registration Deputy  
16 in, but it does take much more time for me to go to each  
17 municipality, find a training that works with my work schedule,  
18 and attend that training versus just being deputized for the  
19 whole state.

20 Q But it's your time, correct? Nobody is preventing you  
21 from -- nobody has taken any steps to prevent you from being a  
22 Special Registration Deputy?

23 A Except making it more difficult with my schedule, yes.

24 Q You mentioned you have done work registering college  
25 students; is that correct?

1 A Yes.

2 Q And that was before you graduated in 2014?

3 A Yes.

4 Q And during your time in college, the voter ID law was only

5 in effect for one election; is that correct?

6 A I believe so.

7 Q That would have been the February 2012 election?

8 A Yes, that sounds right.

9 Q And other than that election, students weren't required to

10 show an ID to vote?

11 A No. Though I do remember, because the law was kind of

12 going back and forth whether it was in effect or not, that we

13 were dealing with helping students to get IDs in case they would

14 need them for future elections.

15 Q But during that period they weren't required to show an ID

16 other than the February 2012?

17 A I believe that's correct.

18 Q Okay. And you believe that the voter ID requirement

19 imposes one obstacle too many for college students?

20 A Yes, I do.

21 Q Are you aware of the amount of time that college students

22 on average spend on social media?

23 A I couldn't give you a number, no.

24 Q You said you do have a valid Act 23-compliant ID, correct?

25 A Yes, I have a driver's license.

1 Q Do you have a passport?

2 A I do.

3 Q Any other compliant IDs?

4 A Not that I am aware of.

5 Q And you are registered in Milwaukee?

6 A Yes.

7 Q Just briefly like to discuss that instance I think you  
8 mentioned on the north side of Milwaukee?

9 A Uh-huh.

10 Q Somebody was telling people that an ID was required when it  
11 wasn't required?

12 A Yes.

13 Q Do you recall which election that was?

14 A That was the 8th Senate District recall election which was  
15 in the summer of 2011. It was a special election.

16 Q Okay. And as far as you know, the person telling people  
17 that they needed an ID wasn't a member of the Government  
18 Accountability Board, was it?

19 A No.

20 Q As far as you know, it wasn't a state employee?

21 A As far as I'm aware, it was not.

22 Q As far as you know, it was a private citizen?

23 A As far as I'm aware, yes.

24 MR. JOHNSON-KARP: No further questions. Thank you.

25 THE COURT: Any redirect?

1 MS. WILSON: No, Your Honor.

2 THE COURT: Thank you, Ms. Gagner.

3 THE WITNESS: Thank you.

4 (Witness excused at 2:35 p.m.)

5 MR. SPIVA: Your Honor, our next witness is Carrie  
6 Scherpelz.

7 **CARRIE SCHERPELZ, PLAINTIFFS' WITNESS, SWORN,**

8 DIRECT EXAMINATION

9 BY MR. MARTIN:

10 Q Good afternoon, Miss Scherpelz.

11 A Hello.

12 Q Would you please state your name and spell it for the  
13 record.

14 A Carrie Scherpelz, C-A-R-R-I-E S-C-H-E-R-P-E-L-Z.

15 Q Thank you. Ms. Scherpelz, could you tell me where you were  
16 born and where you grew up?

17 A I grew up in Oak Park, Illinois, and grew up in Illinois,  
18 moved to Wisconsin in 1978.

19 Q Okay. And where did you go to college?

20 A University of Illinois.

21 Q Okay. And what do you do for a living?

22 A I'm a freelance marketing communication expert.

23 Q Okay.

24 A I work from home.

25 Q Okay. And do you also work and volunteer your time on

1           election voting-related activities?

2       A     Yes.

3       Q     And how do you do that?

4       A     I have worked as a Special Registration Deputy. I have  
5           worked at the city clerk's office as a volunteer during early  
6           absentee voting, and I began working in 2013 at my own polling  
7           place as a poll worker.

8       Q     Okay. And let's talk a bit about your work as a Special  
9           Registration Deputy. When did you start doing that work?

10      A     It was sometime in early 2012.

11      Q     Okay. And was that a statewide registration deputy or was  
12           that a city specific?

13      A     So whatever date it started, I was not able -- the  
14           opportunity to be statewide no longer existed. I don't know  
15           exactly when that started. So I was only deputized for the City  
16           of Madison.

17      Q     Okay. And can you describe your work as a registration  
18           deputy for Madison?

19      A     Yeah. I would sit at a table outside of a local grocery  
20           store where the grocery allowed us to have a table for actually  
21           many weeks -- days during the week before an election, and many  
22           people considered that a real convenience and would say, oh, I  
23           need to do this and stop by. And then I've also been on the  
24           University of Wisconsin campus in Madison just with a clipboard  
25           asking students if they were registered and would like to

1 register.

2 Q Okay. And describe me the process of actually registering  
3 someone when you were a registration deputy.

4 A Okay. When I first started, I would have my clipboard,  
5 piece of paper, and the individual could just either give me the  
6 last four digits of their Social Security number if they did not  
7 have a Wisconsin driver's license or they could fill in their  
8 driver's license number, and they did not even need to have that  
9 if it was a memorized number. And then they would fill out  
10 either their change of address or their new address -- their  
11 only address if they were a new voter, check off the box that  
12 they were a citizen, and, you know, et cetera. Then I would  
13 sign it. They would sign it. And I could do this up to 20 days  
14 before an election, and it would go to the city clerk's office  
15 for confirming all of that information.

16 Q And then how would the city clerk's office confirm that  
17 information?

18 A They would use their database and then send a postcard to  
19 that address, and it was first class, so if it didn't bounce  
20 back, my understanding was that would confirm the address.

21 Q Okay. Did you ever hear any complaints about the  
22 registrations that you submitted?

23 A No.

24 Q And how many people would you say that you registered to  
25 vote as a Special Registration Deputy?

1 A Probably 50 to 75 people.

2 Q Okay. And for how long were you a Special Registration  
3 Deputy?

4 A I'm thinking it was a year and a half to two years that I  
5 was actively doing it.

6 Q And why did you stop?

7 A Well, when it became necessary for a person to have  
8 documentation with them, I just didn't think I would find many  
9 people who had that. I'm kind of old school, so I don't have  
10 any of my bills or lease or any of the requested documentation,  
11 and I don't have anything on my phone because I don't do that  
12 kind of work on my phone.

13 Q Okay. And you're referring to the change in -- the 2014  
14 change in the law --

15 A Yeah. Then they would have to prove their residence to me  
16 by showing me this documentation, and I didn't really understand  
17 why because, as I understood it, that process of -- the city  
18 clerk was taking care of that and could ascertain whether  
19 someone actually lived at that address, and I didn't know there  
20 was a problem with it.

21 Q Okay. And you mentioned that you didn't do that type of  
22 work on your phone, and you mean --

23 A I still don't. Yeah, I just don't handle any bills,  
24 banking, et cetera. I just do phone calls, e-mail, and texts.

25 Q Right. And do you think many of the voters or some of the

1           voters that you have interacted with as a registration deputy  
2           would be in a similar situation?

3       A     Now that I have worked to register people at the polls, I  
4           realize that most young people have something on their phone.  
5           It's not so much the case that someone in my age range has  
6           showed me something on their phone.

7       Q     Okay.

8       A     Yeah.

9       Q     And so people are still continuing to have to meet these  
10          proof of residency requirements now but at the polling place  
11          where you worked that you mentioned earlier?

12      A     Yeah, yeah.

13      Q     And we'll talk about that in a little bit. Can you  
14          describe some of the forms of documentation that the change in  
15          the law required?

16      A     Well, it just made a list of specific forms, and we  
17          actually designate them with a letter, so "B" in general refers  
18          to banks. "U" is utilities of any kind including Charter, MG&E,  
19          and I'm not going to go through all the other ones, but "R"  
20          would be for lease, residential lease, and we can take pay  
21          stubs, and there's a different initial for each one.

22      Q     Okay.

23      A     And I should mention that in my work as an SRD, it just  
24          went from needing none of those things, and the same thing with  
25          registration at the polls, to first putting those initials down

1           and then later having to add the entity. So not just "U" but  
2 MG&E, and then later adding the digits of their account number.

3       Q     Okay. And now you're describing things that people -- new  
4 requirements that people have to do at the polls on election  
5 day?

6       A     Yeah. I just want people to realize that during these  
7 several years, I saw a big change.

8       Q     Okay. Describe some of those changes and what you've  
9 observed as a poll worker. Actually, let me back up a little  
10 bit and tell me about your background as a poll worker, and then  
11 we'll talk about those changes.

12      A     Okay. So I guess, first of all, would be maybe why I  
13 started doing it. It's just I've always been a regular voter  
14 since I was 18. I think everyone's vote is important, and every  
15 voter matters, and so that's why I decided to volunteer. I had  
16 a little more time. I've also really liked election day because  
17 it's been a community event. I lived at the same address for 25  
18 years, walked to the same polling place. Then I moved and  
19 decided that I would get involved at my polling place and be a  
20 poll worker there, so that's what I did.

21      Q     And which polling place is this?

22      A     I work at Capitol Lakes Retirement Center in downtown  
23 Madison.

24      Q     And can you describe the type of voters that you service at  
25 that center?

1       A     Yeah. It's a wide range because we get a lot of university  
2       students, then we get the people who live in that retirement  
3       center from nursing care to assisted living to independent  
4       living, and then in between there are a lot of condo and  
5       apartment dwellers, young people and retired people.

6       Q     Okay. So students and elderly people?

7       A     Yeah. If you're calling me elderly.

8       Q     No, I meant --

9       A     Not in the nursing home yet.

10      Q     I apologize. I did not mean to insinuate that at all. A  
11       moment ago you were describing the changes in the amount of  
12       information that you as a poll worker are required to take from  
13       a voter when they register or update their registration at the  
14       polls?

15      A     Right.

16      Q     Can you describe those changes in a little more detail to  
17       me and what your observations about them are?

18      A     Okay. First of all, I tend to work at the registration  
19       table in my poll worker role. It seemed to boil down to because  
20       it's a more complex task than the other tasks on voting day, and  
21       so I have kind of got a niche in doing that, and so, as I said,  
22       the first time I started working there we just had to write the  
23       "U," "V," et cetera, on the forms.

24      Q     I see.

25      A     I started working as a poll worker at the point when that

1           was required.

2           Q       And that was in --

3           A       I can't tell you exactly what year it was, but it's all  
4           since -- probably 2013. I've worked five elections at this  
5           polling place, and I have not yet worked a presidential election  
6           just by the way. So it was definitely after 2012.

7           Q       Okay.

8           A       So there's a line of people at our particular polling place  
9           the whole time, so it's a very intense process. I do it every  
10          minute practically when I'm there.

11          Q       Okay.

12          A       And so we have people fill out a form on a clipboard and  
13          then come to us. We check their form to be sure everything is  
14          all right, and then we have to ask them for their proof of  
15          address, and they -- I mentioned the different options for that.  
16          We have a spot on the form to write down the initial and then,  
17          as I said, at one election it changed so that we began writing  
18          down the actual entity and then had to write down at another  
19          election -- again, this is out of the five I worked in, and I  
20          can't tell you which one -- but the last two at least I have  
21          been writing down people's -- the last four digits of their  
22          account numbers.

23          Q       So their account numbers on their bank accounts or their  
24          utility bills or something. And in your experience as a poll  
25          worker and someone registering voters, has that increased your

1           confidence at all in the accuracy or the truthfulness of these  
2           registrations?

3       A      No.

4       Q      Okay.

5       A      I didn't really have a worry about it.

6       Q      Okay. And let's talk about the account numbers for a  
7           moment. So it's just a part of an account number if you use a  
8           bank account --

9       A      Uh-huh.

10      Q      -- or a utility statement. Do you know whether anyone ever  
11           calls the bank or the utility company to confirm that this  
12           document is truthful?

13      A      I don't know that personally, but I felt uneasy about  
14           collecting the information, and I thought a voter might ask me  
15           sometime about it, and so I did call my own utility company,  
16           bank, and internet service provider -- I'm sorry, I didn't call  
17           them, I e-mailed them, and each one of them responded almost  
18           immediately. My question was, poll workers are asking for this  
19           information. If you were to be called by the city clerk's  
20           office to confirm my identity, would you give them my identity  
21           based on these digits and tell them that I was at that bank?

22           And they all --

23           MR. MURPHY: Object as hearsay, Your Honor.

24           THE COURT: I'll overrule it. Go ahead.

25           THE WITNESS: Okay. They just responded no, that they

1           would need a court order to do that.

2           MR. MARTIN: Okay.

3           THE WITNESS: And that my privacy was protected.

4           BY MR. MARTIN:

5           Q        Okay. So in administering these requirements, has it  
6           impacted the amount of time it takes to register voters at your  
7           polling location?

8           A        It has.

9           Q        Can you describe that?

10          A        As I said, in our location I'm busy the whole time  
11           registering people, so there's always a line and -- or almost  
12           always a line I would say, and so every few minutes matters, and  
13           so just having to get those account numbers, write down the  
14           entity, it just takes a little time. Even on a lease it's  
15           difficult because you kind of have to read down and find where  
16           the actual leasing company is on it because they're all  
17           different, and there's a different line that they're on. So  
18           it's just -- it may not seem like much, but it adds up when  
19           you've got a long line of people.

20          Q        Okay. And how would you compare the length of time that  
21           this process takes now to when you first started?

22          A        As I said, probably a minute or two longer.

23          Q        For each voter?

24          A        Yeah. And, again, it varies on how quick they are to get  
25           out their information because on a screen it can take quite a

1 long time for them to pull it up, so it's kind of hard to  
2 compare apples to apples.

3 Q Right. And have you encountered voters who have been  
4 unable to provide that documentary proof of residency?

5 A I've had voters who could not provide it without helping --  
6 us helping them by having a laptop there for them to pull  
7 something up.

8 Q Okay.

9 A Because they didn't have it in their possession or on their  
10 phone.

11 Q And do you know whether every polling location has a laptop  
12 like that?

13 A I don't --

14 MR. MURPHY: Object to foundation.

15 THE COURT: It's a question about whether she knows.

16 THE WITNESS: I do not know.

17 BY MR. MARTIN:

18 Q Okay. And since you started working as a poll worker, the  
19 voter ID law has also come into effect; is that correct?

20 A Yes.

21 Q And how many elections have you participated in or worked  
22 as a poll worker in with the voter ID law in effect?

23 A Two. I missed the earliest one, and I have done this past  
24 February and April.

25 Q Okay. Can you describe your observations in those

1           elections with the voter ID law?

2       A     I think that in general at my polling place people seem to  
3           have gotten the word that they needed an ID, and it's slowed  
4           down the process, and there was some confusion with the polling  
5           staff, getting it going. We staffed up at ours by a third.

6       Q     Okay.

7       A     So we had additional people, but a lot of them had little  
8           experience.

9       Q     Right.

10      A     And so I wouldn't say it was like perfectly smooth, but  
11           February was great because it was a slow -- very slow election.

12      Q     Right.

13      A     So I had one problem where I could not allow someone to  
14           vote.

15      Q     And we'll talk about that in a moment.

16      A     Okay.

17      Q     But let's go back to your comment about the poll workers  
18           increasing by a third. And how many additional people is that?

19      A     In our polling place I think it was about four extra  
20           people.

21      Q     Okay.

22      A     And in the City of Madison it was many hundreds that -- I  
23           know because I was helping to round up volunteers because of an  
24           e-mail the city clerk's office sent out about how many  
25           additional people they would need.

1 Q Okay. And how many polling locations are there in Madison?

2 A 87.

3 Q Okay. And you participated in a process of signing up  
4 several hundred, you said, additional poll workers?

5 A I sent out -- I mean, not if you're implying I signed up  
6 several hundred, but I think there were 600, if I remember  
7 right, that we needed, and so they just asked us to e-mail our  
8 friends.

9 Q Okay. Let's talk about the person in February who you had  
10 to turn away you said.

11 A Uh-huh.

12 Q Can you describe that?

13 A Yeah. It was one of our registered voters, so I was  
14 standing at the poll book, and his name was in there, and he  
15 showed me his Wisconsin -- I mean his Minnesota driver's  
16 license, which was a current license with his likeness on the  
17 license, and he had no other acceptable ID. We offered him a  
18 provisional ballot, and he did not take that. But I could see  
19 why he was legitimately confused because there were people with  
20 passports that didn't indicate what state they were from, and  
21 people can also show Wisconsin driver's license as a proof of  
22 identity even if the address isn't correct.

23 Q Right.

24 A And so, I mean, there's been a lot of education about the  
25 fact that if you could get a prescription drug and drive, you

1 can vote, and I think he just thought, you know --

2 Q He can do those things so --

3 A Yeah, so he could vote. So I could really see how he got  
4 confused.

5 Q Right. And you mentioned that people were using Wisconsin  
6 addresses [verbatim] that don't have a current address, and  
7 that's because the ID law isn't there to confirm residency,  
8 right? That's the proof of registration requirements, correct?

9 A Yeah.

10 Q And have you experienced fellow poll workers who have had a  
11 hard time keeping track of the difference between the proof of  
12 residency requirements and the ID requirements?

13 A Yes.

14 Q Can you talk a little bit about that?

15 A I think especially if you register people, there was  
16 definitely some confusion at the first election among the poll  
17 workers about whether that -- the address had to be current on  
18 the driver's license because it's a different standard for each.  
19 For registration proof of address, it must be current, but not  
20 for purposes of identity.

21 Q And have you similarly observed voters who have a hard time  
22 keeping those two distinct?

23 A Yes. Some people I have had to say, no, your address does  
24 not have to be current.

25 Q Okay. And have there been any other incidents maybe in the

1       April election that you observed where you had to turn someone  
2       away because of the ID law?

3       A       Yes. In that election -- and I should mention I feel  
4       really bad about these, especially because they were both  
5       registered, legitimate voters, and so this man also -- a young  
6       man was in our poll book, but then when it came time to show his  
7       ID, he was a student, and he had a student ID and his proof of  
8       enrollment, but he didn't realize that the ID he was using was  
9       not a student voter ID.

10      Q       Right.

11      A       And so, again, it had a picture of him. It looked just  
12       like him. We knew he was one of our voters. He was in our poll  
13       book. And so I felt really bad about turning him away, and,  
14       again, he did not want a provisional ballot.

15      Q       He did not. Do you have an opinion about why either one of  
16       these individuals did not want a provisional ballot?

17      A       I think because we explained to them what it would involve,  
18       that they would have to come up with the correct ID within three  
19       days and then get it to the city clerk's office in order to have  
20       their vote be counted. Apparently -- I mean, I can only guess,  
21       but it sounded like they didn't think they'd be able to do that.

22      Q       Okay. Fair enough. Now, you were -- felt compelled to  
23       write some articles about your experience as a poll worker,  
24       correct?

25      A       I did.

1       Q     Can you describe those articles and the reasons that you  
2     decided to write them?

3       A     Well, the first article I wrote was called "Open Letter  
4     from a Poll Worker to the Student I Turned Away Yesterday," and  
5     it was published in Madison the day after the February election,  
6     and it was about the situation I described with the young man,  
7     and I tried to speak as a nonpartisan poll worker and just say,  
8     I feel bad about this. I know it's confusing from the two  
9     aspects I mentioned, a passport would work, noncurrent license,  
10    Wisconsin ID would work, and I said I know that was you. I know  
11    you weren't impersonating a voter. And then I listed the ways  
12    he could get an ID and what they were and for future reference  
13    to tell other people.

14      Q     You felt the need to educate the public?

15      A     Yeah, yeah.

16      Q     And do you feel like the public had been adequately  
17     educated up to that point?

18      A     I don't think so, and I actually am just making my way  
19     along as a poll worker. We were getting changes even by e-mail  
20     down to the April election. One of the new things in our  
21     training was that people with a citation or a rescinded --  
22     temporarily rescinded license can vote without a photo ID if  
23     they showed those pieces -- those documents.

24      Q     And by citation you mean like a speeding ticket?

25      A     A speeding ticket, yeah, and so I just thought, well, this

1       is weird and confusing. There must have been some people who  
2       came up against that.

3       Q       When did you learn about that requirement?

4       A       In the training for the April election, so it had happened  
5       between February and April, and then the thing we got by e-mail  
6       a couple of days before had to do with the process of checking  
7       people in and the ability to take a veteran's ID as a proof of  
8       identity.

9       Q       And just to sort of summarize what you're saying is that  
10      the laws were changing up until the eve of the election; that's  
11      right?

12      A       Yeah. And that actually gets me to the point of the second  
13      article. I don't know if you had a question before that because  
14      I didn't quite finish. The second one was called "I'm a Poll  
15      Worker and I've Come to Dread My Job," and it was because I  
16      realized on the eve of the election that I was just -- I knew it  
17      would be a very busy election compared to February, and I work  
18      in a very high-density polling place to begin with, so we can  
19      have just many, many people coming through there.

20      Q       Let me stop you right there real quick. How did you know  
21      it was going to be a high-intensity election?

22      A       I knew because they were in a primary that many Republicans  
23      and many Democrats had strong motivation, strong feelings, so it  
24      was predicted that it would be a high turnout.

25      Q       Right. Go on.

1       A     So we were prepared for that and staffed up for it, but I  
2     realized that I, first of all, wanted to serve voters well, and  
3     I didn't want them to get a sense of confusion because I just  
4     think that's really damaging to democracy if they feel like  
5     their poll workers don't know because I feel like we're some of  
6     the more trusted people out there, and so I wanted to be sure I  
7     understood everything well and didn't look confused or lead them  
8     astray.

9           And then I just kind of have two feelings that are more  
10    emotional, just that I felt intrusive more and more about asking  
11    for the account information. It just kind of nagged at me. And  
12    the second thing was just that I've always felt like it was a  
13    very trusting atmosphere at the polls, and it seemed to be  
14    growing more trusting -- you know, less trusting between poll  
15    workers and voters, like we were starting out with a distrust  
16    rather than trust even though I think everyone tries to be  
17    really encouraging to voters and helpful to voters. There's  
18    that underlying thing, and especially for college students  
19    because I felt like they had an additional thing they had to do  
20    by showing their proof of enrollment.

21       Q     Right.

22       A     That seemed especially untrusting.

23       Q     Right.

24       A     And one last thing, because I work in a retirement  
25     community, in the first election in February there was a man who

1           his license was close to being expiring, and he would have had  
2           no reason -- he stopped driving years ago, using a walker and  
3           stuff, and I thought, oh, my gosh, I hope I don't run into  
4           somebody who lives here, and people around it all know him, but  
5           I have to turn him away from voting when he's been voting all  
6           these years. I mean, I just -- I was really worried about that.  
7           So there were just things like that. I worried how the new  
8           people would do and things like that.

9       Q     Right. And so you said that you felt that there was a  
10      dynamic of -- the default position was one of distrust rather  
11      than trust now?

12      A     Yeah.

13      Q     And that's, from your point of view as a poll worker, as a  
14      result of the state's laws, right?

15      A     Uh-huh.

16      Q     And in your opinion, are you more confident in the  
17      integrity of the election system now because of these laws?

18      A     No.

19      Q     Are you less confident?

20      A     I think I am because to me the integrity means that every  
21      eligible voter gets to vote and have their vote counted.

22      Q     Right. And the gentleman you mentioned whose ID was about  
23      to expire and who lived in Capitol Lakes, I take it, that's a  
24      situation where everyone there knows him. There's no doubt  
25      about where he lives, but --

1 A Uh-huh, right.

2 Q -- if he failed to meet this residency requirement, you  
3 would have to turn him away?

4 A I even know he lives there.

5 Q Right, right. I don't know if you had started working  
6 before this option had been eliminated, but were you aware that  
7 you used to be able to corroborate the residency and identity of  
8 a person at the polls?

9 A I was aware, but that hasn't been an option while I have  
10 been working.

11 Q Okay.

12 A It would have given peace of mind if I knew someone could  
13 do that.

14 MR. MARTIN: Right. Okay. I think that is it for me,  
15 Your Honor.

16 THE COURT: Okay. Before we turn you over for  
17 cross-examination, Capitol Lakes Retirement Center, is that  
18 right around the corner from the courthouse here?

19 THE WITNESS: It is.

20 THE COURT: Okay. Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. MURPHY:

23 Q Good afternoon, Ms. Scherpelz. I'm Mike Murphy. We talked  
24 a couple times on the phone.

25 A Yeah.

1 Q So hello.

2 A Hello.

3 Q So I want to make sure I have the time line correct here.

4 You talked about being a registration deputy and doing work at  
5 grocery stores. Do I have it correct that you have not done  
6 that since the changes in the law that you discussed?

7 A I have not.

8 Q So you don't have a comparison personally for before and  
9 after?

10 A I don't.

11 Q Okay. And you now work at a polling place, and you do some  
12 registration work, but you did not do that before the laws  
13 changed, the document laws changed, right?

14 A Not when it was just give us your last four digits and fill  
15 in your driver's license, but I did it as the law changed so  
16 that we had to include the entity that we gave the initials for  
17 and then include the last four digits, so those were incremental  
18 changes.

19 Q Okay. This might just be a matter of clarification, but  
20 you did not work at polling places before there was a  
21 requirement to show the documents, just since when the  
22 requirements of what you have written down is different?

23 A Right, right.

24 Q Okay. So you can't make a comparison to before and after  
25 showing documents?

1 A I can't.

2 Q Okay. You discussed two people who came to vote and didn't  
3 have a qualifying ID, right?

4 A Uh-huh.

5 Q One was a student who didn't have a qualifying student ID.  
6 Do you know what's involved in getting a qualifying student ID  
7 here in Madison?

8 A Yes, I do.

9 Q Okay.

10 A I'm actually a senior guest auditor, so I have a Wiscard  
11 which wouldn't allow me to vote, but if I wanted to get a  
12 student ID, I would go to the same place where you get your  
13 Wiscard, stand in line, have my picture taken, and then they  
14 would give me a second card.

15 Q Okay. So you're familiar with the Union South location  
16 where that can be done?

17 A Uh-huh.

18 Q And the Gordon Commons location where that can be done,  
19 expanded during election times?

20 A Yes.

21 Q And that person who came to vote in April did not want a  
22 provisional ballot and left saying he was going to try to get a  
23 qualifying ID, right?

24 A Right.

25 Q And you don't know if he came back or not?

1 A I don't because I work half days, so I don't know.

2 Q So you just can't speak to whether or not he was able to

3 vote that day?

4 A I can't.

5 Q And the other person with the out-of-state driver's

6 license, he or she also said that they were going to come back,

7 get a qualifying ID and come back, right, or look for one?

8 A That one I don't think did. The first one did.

9 Q Okay.

10 A Yeah.

11 THE COURT: The student came back.

12 THE WITNESS: He said he would try to.

13 THE COURT: The student said he would try to come back

14 with the student voting ID.

15 THE WITNESS: He had two possible options. One was to

16 go over to Union South or another location to get the proper ID.

17 The second one, he could have had a passport, but he believed

18 his had expired. You can't use one that's more than two years

19 expired.

20 THE COURT: Okay.

21 BY MR. MURPHY:

22 Q But you don't know whether he came back with a passport

23 that day?

24 A I don't. I was not there.

25 MR. MURPHY: That's all.

1                   THE COURT: Any redirect?

2                   MR. MARTIN: Nothing from me, Your Honor.

3                   THE COURT: Thank you, Ms. Scherpelz.

4                   (Witness excused at 3:08 p.m.)

5                   THE COURT: Next up. Just to let you know what my  
6 thinking is on scheduling here: When you get to the 3:45 to  
7 4:00 neighborhood, we'll take our afternoon break and then come  
8 back for the closing session.

9                   MR. SPIVA: Okay, great.

10                  THE COURT: Wherever you have a natural break in that  
11 range.

12                  MR. SPIVA: Sounds good. Your Honor, we call  
13 Dr. Kenneth Mayer.

14                  **KENNETH MAYER, PLAINTIFFS' WITNESS, SWORN,**  
15                  DIRECT EXAMINATION

16                  BY MR. SPIVA:

17                  Q      Good afternoon, Dr. Mayer.

18                  A      Good afternoon.

19                  THE COURT: Do you have a copy of Dr. Mayer's report?

20                  MR. SPIVA: I do.

21                  THE COURT: Could you hand those out?

22                  MR. SPIVA: Will do. And these are on our exhibit  
23 list, but for some reason the copies I have didn't have the  
24 exhibit numbers, but I wrote them on.

25                  THE COURT: Okay.

1 BY MR SPIVA:

2 Q So Dr. Mayer, what is your area of expertise?

3 A Generally in political science, the study of American  
4 politics with specialties in election administration,  
5 presidential power, elections generally, election law.

6 Q Okay. Let me ask you to turn in your initial report,  
7 plaintiffs' exhibit 38, to your CV which appears on PX38, begins  
8 on page 50. It's Exhibit 1 to your initial report.

9 A So my copy of the report does not have my CV.

10 Q Okay. Why don't we put it up on the monitor. And I don't  
11 know if we can make that a little easier to see. That's just  
12 the first page --

13 THE COURT: Just do it by chunk, and also I'll tell you  
14 to give me the 10,000-foot view.

15 MR. SPIVA: Yeah, absolutely. That was my intent.

16 THE COURT: You're not going to need to qualify him as  
17 an expert here. I'm going to hear his testimony. Just give me  
18 the highlights of his qualifications, and we can be done with  
19 that. Don't need to belabor it.

20 MR. SPIVA: Okay.

21 BY MR. SPIVA:

22 Q So, Dr. Mayer, where are you employed?

23 A I'm employed in the Political Science Department at the  
24 University of Wisconsin-Madison.

25 Q And how long have you been there?

1 A Since 1989.

2 Q What do you teach?

3 A I teach courses in American politics, presidency, campaign  
4 finance, graduate courses on the presidency and American  
5 politics. I have taught courses on election law, comparative  
6 electoral systems, and the odd special topic seminar from time  
7 to time.

8 Q Have you written any peer-reviewed articles or books  
9 relevant to the topics that you're going to be testifying on  
10 today?

11 A Quite a few.

12 Q Okay. And I take it you got your Ph.D. from Yale  
13 University in 1988 in political science?

14 A That's correct.

15 Q And you have an M.A. from Yale University in 1987 also in  
16 political science?

17 A That's correct.

18 Q And your undergraduate degree is from the University of  
19 California-San Diego also in political science?

20 A Yes.

21 Q Okay. And what did we ask you to do in this case?

22 A I was asked to evaluate the effects of the changes in  
23 registration and election administration practices since 2011  
24 primarily by analyzing the Statewide Voter Registration System  
25 and the Department of Transportation list of driver's licenses

1           and IDs to look at the individual-level effects on the  
2 probability that a registrant would cast a ballot.

3           Q       Let me ask you, if we could put up page 4 of Dr. Mayer's  
4 initial report, PX38. You can turn in your hard copy. Can you  
5 just at first at a kind of a high level give us a summary of  
6 what you concluded along the lines of what you laid out here on  
7 page 4 of your report. Your Honor, I think this PX38 I believe  
8 is not objected to. Correct me if I'm --

9           THE COURT: Is it?

10          MR. JOHNSON-KARP: No objection.

11          THE COURT: Okay. Very good. I'll admit it.

12          MR. SPIVA: Thank you.

13          THE WITNESS: The primary conclusion that I reached was  
14 that the probability that an individual -- individuals voted in  
15 2014 went down among certain key groups, particularly  
16 African-Americans, Latinos, individuals who resided in a student  
17 ward, and among people who did not show up as possessing a  
18 driver's license or Wisconsin state ID, and I found that most of  
19 those effects were either entirely absent or much smaller in the  
20 2010 election before any of these restrictions had gone into  
21 effect.

22          I did some ancillary analysis that looked at the number of  
23 individuals who registered on the weekend before -- the late  
24 weekend registration in the weekend before elections and through  
25 2006 and 2010, which was the time period that the SVRS was

1           started in the last election where you could do that. I  
2           subsequently also reviewed some materials relating to the ID  
3           petition process and the issuance and status of provisional  
4           ballots in the April 2016 primary.

5           BY MR. SPIVA:

6           Q       And what did you conclude with respect to the effects of  
7           the photo ID requirement on minorities and young voters?

8           A       There are two pieces to that. The one piece of information  
9           is that the nonpossession rate for driver's licenses and photo  
10          IDs, which I believe was among all registrants, was 8.4 percent.  
11          That nonpossession rate was higher for African-Americans and  
12          Latinos and significantly higher among people who resided in  
13          student wards. If you looked at the individual-level analysis  
14          that I did, that each of those characteristics, being  
15          African-American, being Latino, residing in a student ward, all  
16          had a significant depressive effect on the probability that a  
17          registrant cast a ballot in 2014.

18          Q       All right. And we're going to look at each of those in  
19          some detail. But before we do that, can you describe the  
20          sources that you drew upon and your methodology that you used in  
21          reaching your conclusion?

22          A       The primary source material that I used was a copy of the  
23          Statewide Voter Registration System, which is the statewide list  
24          of all registered voters, and that was pulled in September of  
25          2015. At about the same time I believe I received the database

1           from the Department of Transportation listing everyone who  
2 possessed a driver's license or state ID. The primary method  
3 that I used was to try to match those to databases. That gave  
4 me information on the race of individuals who did match because  
5 self-identified races data, that's collected by the Department  
6 of Transportation. It also for people who did not match, I used  
7 race probability data from a national voting technologies firm  
8 called Catalist.

9           Q     Can you explain that?

10          A     Catalist is a national voter data company that provides  
11 primarily information to campaigns and other organizations that  
12 they use for voter contact, and one of the things that they do  
13 is provide estimates of the rates of registered voters, which in  
14 a state like Wisconsin, which is not a Section 5 or former  
15 Section 5 state, does not collect race information as part of  
16 the voter registration process, and it provides an estimate of  
17 the probability -- it provides an estimate of the racial  
18 identification of registered voters, at least is how I use them.  
19 They use a combination of demographic data, location, name,  
20 census block, date of birth. It's validated through a number of  
21 processes, and it provides, based on some tests that I  
22 conducted, a very high degree of confidence that they get the  
23 racial identification correct.

24          Q     What is it about -- what gives you confidence in their  
25 data?

1       A     I received probability estimates of the race of everybody  
2     in the SVRS.

3               THE COURT: From Catalist.

4               THE WITNESS: From Catalist. I also at the conclusion  
5     of the matching process, I had successfully matched about 91.6  
6     percent of the registrants matched up to a unique record in the  
7     Department of Transportation. For each one of those  
8     individuals, I had both the Catalist estimate of their race as  
9     well as their self-identified race, which they themselves had  
10    entered when they applied for a driver's license or state ID,  
11    and they matched about 96 percent of the time, which I took to  
12    be a very high degree of confidence that they got it right.

13              BY MR. SPIVA:

14       Q     So Catalist got it right 96 percent of the time?

15       A     That's correct.

16       Q     Okay.

17               THE COURT: Is there some reason to think that the 8.4  
18     percent of the voter records that you didn't have matches for  
19     from the Wisconsin driver's license database were particularly  
20     racially ambiguous records?

21               THE WITNESS: I don't, and the reason is that the -- to  
22     the degree that Catalist made errors, and it was a non-zero  
23     error rate -- it was small -- about 90 percent of the errors  
24     amounted to misclassifying someone who was a minority as white.  
25     So I was not overidentifying members of minority populations.

1           What I was doing or what Catalist was doing was mistakenly  
2        classifying minority registrants as white, and what that has the  
3        effect of doing is it actually biases all of my estimates  
4        towards zero. So the estimates that I produce are actually  
5        smaller than what they would be if I had absolute accuracy in  
6        the identification, but the numbers of inaccurate  
7        identifications was so small that in my view it would not have  
8        had a material effect on any of my conclusions.

9           THE COURT: Because you already had 91.6 match from the  
10        driver's license data, and then that meant that 8.4 percent of  
11        the time you had to take an estimate based on the Catalist data.

12           THE WITNESS: That's correct. And that accuracy rate  
13        of 96 percent carries across, and there's no reason to think  
14        that it wouldn't. I'm looking at an error rate of, you know, on  
15        the order of .7 percent, which is not material.

16           THE COURT: Okay.

17           BY MR. SPIVA:

18           Q        Let me ask you to turn to table 3 which is on page 19 of  
19        your initial report, plaintiffs' exhibit 38. And if you could  
20        just explain what table 3 shows us.

21           A        So there's quite a bit of processing that went on to get  
22        this table.

23           Q        And you can obviously explain that, please, in your answer.

24           A        So do you want me to describe the matching process?

25           Q        Yeah, to some extent. I think at least briefly, yeah.

1       A     So I used a technique known as exact matching where you're  
2           looking at particular variables that uniquely identify  
3           individuals in one or the other databases, and I described the  
4           process that I used. It was a three-pass matching process. On  
5           a first pass one of the fields that exists in the SVRS is that  
6           individuals who register using their driver's license or photo  
7           ID number, that number is recorded, and those numbers are unique  
8           or they are mostly unique. There's a small number of  
9           duplicates, and so I simply matched -- for each person in the  
10          SVRS, I matched to the person in the DOT with that driver's  
11          license or ID number, and that was most of the matches that I  
12          got.

13           For people who did not match, I then -- let me look at my  
14          table of describing that process. It's on table 12 of my  
15          report.

16       Q     What page is that?

17       A     That's page 12 of my report, table 1. So link step A is  
18          the match on driver's license or ID number, and that produced  
19          about 2.3 million linked records. The second pass I matched on  
20          the last name, first name, date of birth, and zip code, and  
21          there were a small -- trivial number of people who were  
22          duplicated on this quadruplicate. I think it was on the order  
23          of a dozen or so -- it was not many -- and I had eliminated  
24          those duplicates, and then I matched to the correct person  
25          or was able to match to the Department of Transportation for

1 another 631,000. And then I matched on the last name, first  
2 name, and date of birth which gave me an additional set of  
3 matches. The total --

4 THE COURT: That means that on the C pass there was not  
5 a match on zip code?

6 THE WITNESS: Right. The way that it's done in exact  
7 match is you start with the highest level of granularity and  
8 then you expand it marginally, but, again, by the time I had got  
9 to step C, there were very few duplicated records on this  
10 triplicate, so it's not like I was matching a person in the SVRS  
11 to the wrong person in the Department of Transportation file.

12 So the total number of linked records was 3,096,992. I had  
13 283,346 unlinked records. Once I had conducted the linking  
14 process, I went through that list and eliminated everybody who  
15 had registered after the November 2014 election because I was  
16 not going to be able to observe their voting behavior, and that  
17 eliminated about 12,700 records, and so that gives me a list of  
18 282,000 -- if we go back to table 3 -- 282,015 registered voters  
19 who do not link to the Department of Transportation file, which  
20 indicates they do not possess -- as of September 2015, they did  
21 not possess a driver's license or photo ID.

22 BY MR. SPIVA:

23 Q So that's -- and that's 8.4 percent of the registered  
24 voters don't have one of those types of IDs?

25 A That's correct. And because I have the racial

1 identification data either combination of the DOT or Catalist, I  
2 can compute the percentage -- the nonpossession rate for  
3 different subcategories. The nonpossession rate for white  
4 registrants was 8.3 percent. For black registrants it was 9.8  
5 percent so about almost 20 percent higher, and for Hispanic  
6 registrants it was 11.1 percent, and for individuals who resided  
7 in a student ward, a nonpossession rate of 21.4 percent.

8 Q And are those significant differences?

9 A I'm not sure that I would classify them as statistically  
10 significant. I didn't do any significance tests. I suspect  
11 they probably would be, but I can't say for certain, but one of  
12 the things that's important here is all of this is entirely  
13 consistent with the full range of literature on driver's license  
14 and possession rate. There's nothing here that is surprising.  
15 The nonpossession rate overall is in line with what similar  
16 studies have found in other states, Pennsylvania, Texas, North  
17 Carolina, Georgia. The fact that there are racial disparities  
18 in the nonpossession rate was also completely in line with the  
19 existing literature, so there's nothing in here that is an  
20 outlier.

21 Q Would you --

22 THE COURT: I'm sorry to interrupt here. And I'm  
23 retrenching just a touch on my suggestion that we be very high  
24 level on your background, but it's apparent that you have used  
25 some statistical analyses in your report, and your educational

1 background doesn't make it manifest how you have a background in  
2 statistics. So if you would just recap that.

3 THE WITNESS: Sure. So my training in graduate school  
4 included training in econometrics and statistics and actually  
5 includes graduate level work in the statistics department.  
6 These are all techniques I have used throughout my career in my  
7 own work with high-level programming languages and high-level  
8 statistical packages. This is also -- this particular matching  
9 technique is also something that I have done in other court  
10 cases. The particular statistical techniques that I use, in  
11 particular the individual-level analysis itself, is not all that  
12 sophisticated. The numbers --

13 THE COURT: This one here, what we've done here so far  
14 you're talking about?

15 THE WITNESS: Well, when we get to the individual-level  
16 probit analysis, which estimates the underlying probabilities,  
17 these are all techniques that I have used throughout my career  
18 and in my own work.

19 THE COURT: Okay.

20 BY MR. SPIVA:

21 Q If I might, this is actually not a sample, right? This is  
22 based on the entire data set?

23 A Right. And so it gets a little tricky trying to do  
24 significance tests when you're dealing with full populations. I  
25 suppose you could make the argument that the SVRS itself is a

1           subsample of the entire population of eligible voters. But as  
2 far as I am aware, the literature that I have seen, this is not  
3 something that people apply statistical tests to --

4           THE COURT: This isn't sampling and projection from a  
5 sample case. This is the whole universe of registered voters.

6           THE WITNESS: That's correct.

7           THE COURT: Okay.

8           MR. SPIVA: And then let me just -- I will kind of  
9 retrench, Your Honor, since I didn't get the CV attached to that  
10 one. The one that's in the record --

11           THE COURT: And I've got it digitally here.

12           MR. SPIVA: Okay.

13 BY MR. SPIVA:

14 Q        But you were the Director of the Data and Computation  
15 Center, College of Letters and Science, University of Wisconsin  
16 from June 1996 through September 2003?

17 A       That's correct.

18 Q       And -- well, we've got the CV in the record probably better  
19 than me, definitively not a statistical person, picking out the  
20 things that I think --

21           THE COURT: Well, I guess -- it's apparent then -- tell  
22 me if this is true. When you got your Ph.D., you had a research  
23 tool requirement or something like that and --

24           THE WITNESS: There was a research methods requirement,  
25 but I make extensive use of quantitative techniques. I have for

1 my whole career.

2 THE COURT: Okay. I'm satisfied.

3 BY MR. SPIVA:

4 Q Just do one more. You got the Robert Durr Award from the  
5 Midwest Political Science Association for best paper applying  
6 quantitative methods to a substantive problem presented at the  
7 2013 meeting. You had some co-authors on election laws and  
8 partisan gains.

9 A That's correct.

10 Q Okay. So, now, you are aware that Dr. Hood did a matching  
11 analysis a little differently, and he says he was able to match  
12 many more individuals between the DOT and the SVRS databases?

13 A That's correct.

14 Q And do you have any dispute with the way he did it?

15 A I do.

16 Q And what is that?

17 A There are two issues I have with the way Dr. Hood performed  
18 his matching analysis. The first is that one of the steps that  
19 he matched on was, I believe, the last name -- I think it was  
20 last name, date of birth, and the last four digits of the Social  
21 Security number, that triplicate. The problem with that is that  
22 on that triplicate, there were 90,000 duplicated records in the  
23 Department of Transportation database, and so it's almost a  
24 certainty that he is producing a large number of false matches.  
25 I can't say how many. It's probably about half assuming that

1           they're randomly assigning to the wrong person.

2       Q     How did you handle the duplicates?

3       A     I eliminated them. So before I did a match, and there  
4       weren't many of them, I went through the Department of  
5       Transportation database, and actually one of the issues -- we  
6       should talk about this -- in the SVRS, there are actually some  
7       duplicated records in the SVRS. It's the same individual, the  
8       same name, the same birth date, the same address, who actually  
9       appear more than once, and that's an artifact of the nature of  
10      large-scale data sets with millions of records, and I went  
11      through and eliminated all of those duplicates.

12           So I had done some preprocessing of both data sets to  
13      eliminate -- they're also in the Department of Transportation  
14      data set that I received. There are actually hundreds of  
15      thousands of duplicates, people who show up as possessing both a  
16      driver's license and a state ID, which is not supposed to  
17      happen, but they're in there. The records show large numbers of  
18      people who are deceased, and I removed those because that's one  
19      of the status flags.

20           I went through with some care examining the data and  
21      preprocessing it in a way that increased my confidence that the  
22      matching that I did was matching the right individual in the  
23      Statewide Voter Registration System to the right individual in  
24      the Department of Transportation data set.

25       Q     And do you have a lot of experience in training -- in

1           matching large databases and working with large databases?

2       A     I do. I've done it a number of different times. There was  
3           a state photo ID trial in 2011-2012 in which I did that. There  
4           was also an analogous process that I did as part of a federal  
5           redistricting trial here in Wisconsin in 2012 to identify  
6           registered voters of Hispanic descent. So this is a technique  
7           that I have used before and am familiar with.

8       Q     Okay. And the court has accepted your technique in those  
9           cases?

10      A     They did.

11      Q     What else was wrong with Professor Hood's matching process?

12      A     The second thing that Dr. Hood did is when he had completed  
13           his first matching process, which is similar to mine although he  
14           produced -- actually he produced about 40,000 fewer -- actually  
15           40,000 more matches than I did, which is roughly the same as the  
16           number of duplicates on that one triplicate. At the result of  
17           that process, he turned over the list of nonmatches to the  
18           Department of Transportation, and they came back to him and told  
19           him that about 90,000 of those individuals actually did show up  
20           in their data as -- they said that they had a record of this  
21           individual, and he accepted that, said I'm counting that as a  
22           match. These people are showing up as a match.

23           I don't think that's the right way to go about that in part  
24           because he has no information about how the Department of  
25           Transportation actually conducted that match. He doesn't know,

1 and I don't know --

2 Q He didn't put anything in his report about how the  
3 Department of Transportation did that?

4 A That's correct. And he admitted in his deposition that he  
5 had no idea how they did it. We don't know whether they used  
6 exact matching. We don't know whether they used probabilistic  
7 matching. We don't know what fields they matched on; I simply  
8 accepted that, which I don't think that's the proper way of  
9 doing it. But as I noted in my rebuttal report, even if you  
10 accept his smaller number of nonmatches, I was able to replicate  
11 my analysis with his list of 145,000 people who didn't match as  
12 opposed to my 283,000 people or 282,000 people who didn't match.  
13 My substantive conclusions were identical. The coefficients  
14 didn't change. People who didn't have an ID were less likely to  
15 vote. People who were African-American, Latino, who were in  
16 student wards, my substantive conclusions were identical. All  
17 it means is that there's slightly fewer people who don't match.

18 Q Okay. And did he also -- I think he got down to about four  
19 point -- I think it was 4.5 percent. I don't seem to have the  
20 figure right in front of me.

21 A That's correct, 4.5 percent.

22 Q Matching kind of compared to your 8.4 percent. Did he then  
23 make some kind of a jump to reduce it further?

24 A Sure. He then, after he concluded that his unspecified  
25 matching process resulted in the 4.5 match rate, he then

1           speculated, and he said I think the real rate is probably closer  
2           to 3 percent without any evidence. It was just speculation.

3           THE COURT: This is 3 percent of registered voters not  
4           possessing --

5           THE WITNESS: That's correct.

6           THE COURT: -- ID. Okay.

7           BY MR. SPIVA:

8           Q       And I think you said this, but even if he were right about  
9           there being fewer people, does it make a difference to  
10          your ultimate --

11          A       Not to my substantive conclusions, no.

12          THE COURT: And by that you mean the proportionality  
13          across these various groups of --

14          THE WITNESS: The effect of these variables, the effect  
15          of not possessing an ID on not voting. It still is a large and  
16          negative and statistically significant negative effect. The  
17          effect of a registrant being black or Latino or residing in a  
18          student ward, all those effects are roughly the same size.

19          THE COURT: Yeah. The difference being essentially  
20          that it just affects fewer people.

21          THE WITNESS: That's correct.

22          THE COURT: Okay.

23          BY MR. SPIVA:

24          Q       If I could ask you to turn to your rebuttal report, which  
25          is PX43, to page 12, the updated table 7, and then let me just

1       ask you, you know, there's an updated table 7 on page 12 and an  
2       updated page -- updated table 8 on page 13. What are these  
3       updated from?

4       A       When I did the original analysis, one of the variables that  
5       I included in the analysis was whether a registrant was female  
6       because that's one of the -- that's one of the self-identified  
7       features of the Department of Transportation database, and as I  
8       was preparing for my rebuttal report, I discovered I made a  
9       coding error in my original analysis which was that I actually  
10      don't have gender information for people who didn't match. I  
11      don't know what their gender is because I hadn't linked them.

12           And the way that I wrote the computer code, that for -- it  
13      classified -- everybody was classified as female if their  
14      underlying gender wasn't male. So that meant for the people who  
15      did not match, that field was blank. I mistakenly characterized  
16      all of those individuals as female, and that's wrong. So I had  
17      to redo the analysis to make sure we had the correct  
18      information, and so what I had to do was simply drop that  
19      variable because I didn't have it for everybody, and the updated  
20      table 7 and updated table 8 reflect that. Again, it doesn't  
21      change any of my conclusions. It has really very, very small  
22      effects on a couple of the variables, but not in any significant  
23      way.

24       Q       Okay. So there's a table 7 and a table 8 in your original  
25      report, and these are updated versions of those tables?

1       A     That's correct.

2       Q     Okay. So looking at updated table 7 on page 12 of your  
3           rebuttal report, can you explain that table to us?

4       A     So this is the first time that I have been able to do or I  
5           think anybody has been able to do this analysis in Wisconsin.  
6           Up until now the inferences about the effect of voter ID have  
7           occurred at the aggregate level. We try to observe changes in  
8           turnout and try to analyze turnout in particular locations,  
9           which is not an ideal way of doing it.

10           I have individual-level data. I have data for every  
11           registered voter in the state. I know whether they voted  
12           because voter history is part of the records. I have  
13           demographic information about voters. I know their age. I know  
14           their race. I know where they live. And I am able, therefore,  
15           to do an individual-level analysis which calculates or estimates  
16           the effects of these variables on the underlying probability  
17           that an individual votes, and so this table shows the results of  
18           that analysis where in all of these models the dependent  
19           variable is whether someone cast a ballot in either the November  
20           2014 election or in one of my controls, the 2010 election, and  
21           that's classified as one if someone voted, zero if they didn't.

22           And then I have a number of these control variables which  
23           is, just going through them, we know that voting behavior is  
24           influenced by previous voting behavior. People get into the  
25           habit of voting, so the likelihood that someone voted in 2014 is

1           going to depend in some sense on whether they have voted in  
2 previous elections. We know their race. We know -- I'm sure  
3 we'll talk about this in a bit. We know which wards I had  
4 defined as student wards based on the location of colleges and  
5 universities around the state. We know the age of the  
6 registrant because one of the fields -- it's not a publicly  
7 available field, but it was part of the disclosure. I know when  
8 a registrant is born, so I can calculate their age.

9           And so I'm able to, using this technique, estimate the  
10 effect of these coefficients on the probability that someone  
11 votes, and the way that -- it can be difficult to interpret  
12 these coefficients directly, but in general a coefficient that's  
13 positive means that variable is associated with a higher  
14 likelihood of voting. A coefficient that's negative is  
15 associated with a lower probability of voting, and just to give  
16 a brief summary of the second column, which is Model 1, 2010 to  
17 2014, you see the first three coefficients, voted in 2012, voted  
18 in recall, voted in 2010, those are all large and positive.

19       Q     What does that mean? If you voted in 2012, what does --  
20 and then you're in column one here with the .66, what does --

21       A     Well, you actually can't -- you can't state directly  
22 looking at this coefficient. You have to do another set of  
23 calculations to convert these into probabilities, which is what  
24 I did --

25       Q     In table 8.

1 A -- in table 8.

2 Q Okay. So go ahead. We'll get there in a minute.

3 A What it means is that all of these coefficients are  
4 statistically significant with the exception of the student ward  
5 in 2014 in Control Model C3 which means that I think that  
6 they're all significant at a level of .0001, which is an  
7 extremely high level of precision reflecting the fact that I  
8 have a large data set here. So voting in 2012, voting in the  
9 recall, voting in 2010, these are all people who voted in those  
10 elections, had a much higher probability of voting in 2014.

11 Being African-American, to register as African-American,  
12 Hispanic, student ward, those are all negative, indicating that  
13 people who were registrants who were African-American,  
14 registrants who were Latino, registrants who live in a student  
15 ward are less likely to vote. Similarly, for the effect of not  
16 having an ID or license is minus .68. That's actually larger  
17 than the positive effects of voting in 2012. So not having a  
18 license means that -- the effect of not having a license is  
19 actually larger and more negative than the positive effect of  
20 voting in 2012. The age variables are all basically controls  
21 because we know that turnout is positively associated with age,  
22 and it's, in fact, what the coefficients show. As registrants  
23 get older, they become --

24 THE COURT: And they're all positive because it's a  
25 comparison from 2010 to 2014?

1                   THE WITNESS: Not quite, Your Honor. The comparison is  
2 that if all of these variables were zero, the probability would  
3 be calculated using the constant, which is minus .43. So you  
4 start with the constant, and then you add the value of these  
5 coefficients based on whether someone meets those  
6 characteristics.

7                   THE COURT: Okay.

8                   THE WITNESS: And the 2010 to 2014 comes in that I am  
9 observing a snapshot of the SVRS in 2015. The SVRS is a dynamic  
10 system. It changes -- I don't know how often the GAB updates  
11 it, but it's probably on a weekly or monthly basis. It changes  
12 all the time, and there's no archive of it. So I can observe  
13 the SVRS in September of 2015. I can't go back to November of  
14 2010 to look at what the SVRS was at that point. There's  
15 constant churn. People move into the SVRS, they register.  
16 People move out of the SVRS, people die, people move out of  
17 state, their registrations are cancelled. The GAB conducts list  
18 maintenance. Every so often they remove inactive voters, and so  
19 the SVRS in September of 2015 is not going to be the same SVRS  
20 that existed in November 2010. So what you need to do is to  
21 account for that. What we observe at a point in time is going  
22 to be different than what we would have observed in a previous  
23 time had we been able to do that, and I controlled for that a  
24 couple of different ways.

25                  In the first Model 1, that is everybody who was in the SVRS

1           as of 2010, as of election day 2010, who were still in the SVRS  
2           in September 2015. So what I've done is removed from the SVRS  
3           everybody who registered after the election -- after election  
4           day in 2010 because I'm interested in looking at the change from  
5           2010 to 2014. I want to observe these same individuals. And  
6           the comparison would be Control C1 which is for these -- well,  
7           that's looking at individuals in -- voting behavior in 2010 for  
8           people who have been in the SVRS since 2006. So the full range  
9           of the SVRS. So that's giving me an estimate of the behavior of  
10          people who have been in the SVRS at the -- since the beginning.  
11          And so that's one point of comparison that I'm looking at,  
12          people who have been in the SVRS for longer, but I'm observing  
13          their behavior in 2010. And you can see that most of the  
14          variables are roughly in the same category. There are few --

15           THE COURT: I guess here is my question, is that  
16          there's a coefficient here that indicates likelihood of a person  
17          voting in any election?

18           THE WITNESS: Just in 2010.

19           THE COURT: Just in 2010.

20           THE WITNESS: That's the control model.

21           THE COURT: Okay.

22           MR. SPIVA: You're talking about the column that's  
23          labeled Control C1 voting in 2010 --

24           THE WITNESS: That's correct.

25           THE COURT: Okay. So we go back to the second column.

1           That coefficient represents the -- not exactly a probability but  
2           a number that could be processed to get to a probability. In  
3           other words, it's a coefficient that indicates the likelihood of  
4           a person voting in some particular election?

5           THE WITNESS: In 2014.

6           THE COURT: In 2014. Okay.

7           THE WITNESS: And so the controls that I used account  
8           for the fact that people are moving in and out of the SVRS at  
9           different times. So I used a variety of starting points and  
10          stopping points. So one -- the first model is looking at 2014  
11          voting for everybody who was in the SVRS as of November 2010.  
12          The second model looks at voting in 2014 using everybody who was  
13          in the SVRS as of the recall. So I'm picking up in Model 2  
14          everybody who registered between the general election in 2012 --  
15          in 2010, I'm sorry, and the recall in 2012. And you can see all  
16          of the coefficients are roughly the same size. There are a few  
17          differences and some of them are a little bit different, but  
18          there are no signs that flip. There are no major discrepancies  
19          in the sizes of the coefficients.

20          And then the control models again use different starting  
21          and stopping points, looking at voting in 2010, looking at  
22          voting in 2014, looking at voting in 2014 with that subset of  
23          registrants who only registered between 2010 and the recall, so  
24          I'm capturing different cohorts of registrants, and with very  
25          few exceptions all of the coefficients are the same size. They

1           all point in the same direction, which is that you observe  
2 significant depressive effects in 2014 -- again, it doesn't  
3 matter when people registered -- and it's not what you observe  
4 when you are looking at voting behavior in 2010.

5           So the key here is that in 2010 none of these laws were in  
6 effect. In 2014 they were all in effect with the exception of  
7 voter ID, and we can talk about that in a little bit. I still  
8 in my report drew some inferences about the effect of not  
9 possessing an ID in 2014 in part because there was substantial  
10 confusion among voters about whether it was in effect or not.

11           THE COURT: So one other question here. So we've got  
12 people with no ID or license. So that would be -- because there  
13 are other ways of voting even if you don't have -- so no ID, by  
14 the way, that means no free DMV voter ID.

15           THE WITNESS: That's correct, Your Honor.

16           THE COURT: Okay. I'm calling it a voter ID because  
17 it's not a driver's license. It's not really a voter ID.

18           MR. SPIVA: Is it any type of DOT ID or license?  
19 Because I think there may be another ID other than the free ID.

20           THE WITNESS: It was anybody who showed up in the  
21 database. Not everybody -- I don't know what the exact  
22 percentages are, but a substantial number of people who have  
23 procured an ID in the last five years have gotten a free voter  
24 ID, but this also counts people who got -- who possess a photo  
25 ID that's not a driver's license even if it's not procured for

1                   the purposes of voting.

2                   THE COURT: Right. So anybody -- but it would not  
3                   include somebody who did not have one of those but they voted by  
4                   using their passports.

5                   THE WITNESS: That's correct.

6                   THE COURT: Okay. Because if the DMV ID was the only  
7                   way to vote, then the coefficient should be negative one, right?  
8                   That would indicate nobody could vote. Nobody in that condition  
9                   voted.

10                  THE WITNESS: I'm trying to replicate the analysis in  
11                  my head. I think that's mostly right.

12                  THE COURT: If you had a category here people who were  
13                  ages 16 and 17, their coefficient should be a negative one  
14                  because they should not have voted.

15                  THE WITNESS: Well, it will amount to a 100 percent  
16                  reduction in the probability of their voting. One of the  
17                  reasons the effect is not one is that later on I'll show a table  
18                  that the effect of photo ID actually doesn't fall just on people  
19                  who don't possess a photo ID. I found, and other studies have  
20                  found, that some of the people who don't vote because of what  
21                  will show up as a lack of photo ID actually have a photo ID, but  
22                  they believe that it doesn't qualify, and so that has the effect  
23                  of sort of making this coefficient smaller because there are  
24                  people who actually possess an ID but who are unable to vote  
25                  because they don't bring it or they've lost it or for whatever

1 reason.

2 THE COURT: Or if somebody said on principle I refuse  
3 to take it out and show it to you to vote.

4 THE WITNESS: It's possible. And as I note in my  
5 report, there is work that has investigated how many people who  
6 don't possess a driver's license or an ID might possess one of  
7 the other forms of qualifying IDs, a passport. I did not have  
8 access to any of that data, and the answer is that there are  
9 some people who do possess that. It's not a large percentage,  
10 but it's definitely not zero.

11 THE COURT: Okay.

12 BY MR. SPIVA:

13 Q There's literature on that though, isn't there, on who  
14 possesses passports and how big of a percentage that is?

15 A That's correct. There was a report I cited in my report  
16 that Professor Charles Stewart of MIT did for a voting rights  
17 trial actually on behalf of the U.S. Department of Justice where  
18 he did have access to all of that data. He was able to match  
19 people with passports, veterans ID. I think those were the  
20 two --

21 Q Military IDs?

22 A And military IDs, and I can't remember off the top of my  
23 head, but the number was nonzero, but it was not large.

24 Q In terms of demographics, who tends to hold passports  
25 demographically?

1       A     Well, I don't know that I have concrete data on that, but I  
2           know that passports are expensive and that it wouldn't surprise  
3           me in the least that there would be a racial disparity in the  
4           possession of passports.

5       Q     Okay. Should we turn to table 8? Do you feel like you've  
6           had a chance to fully explain table 7?

7       A     So the way in which you translate probit coefficients into  
8           understandable probabilities, the probit is a nonlinear  
9           regression technique. A linear regression does not work with  
10          binary variables because linear regression assumes that the  
11          effect of any variable is the same anywhere on the scale, and we  
12          know that as you get close to one or zero, that if you already  
13          have a 98 percent underlying probability of voting, there's no  
14          variable that's going to have a significant effect on that, and  
15          linear regression routinely produces probability estimates that  
16          are outside the bounds; they're greater than one or less than  
17          zero. So what probit does is convert the data into an  
18          underlying -- essentially the shape of a sideways "S." That it  
19          is flat at the bottom, it gets steep in the middle, and then it  
20          flattens out as you get to one.

21           So that means that in order to interpret the coefficients,  
22          you need to know where you are on that underlying probability  
23          distribution. The effect of a variable when you are at about .5  
24          is going to be much greater than it is when you are at .98  
25          or .01. So the standard technique for doing that is you take

1       all of the variables and you insert their mean values, and that  
2       gives you what amounts to the equivalent of the average voter,  
3       and then for the variable that you are interested in, you change  
4       the value of that. And so this table shows the probabilistic  
5       effects -- the effect on the underlying probability of voting  
6       for the variables of interest here which are the demographic  
7       categories --

8       Q       So let me ask you, if I were to look at the column labeled  
9       "2014 Model 1 (2010-2014)" and the row "black," it says negative  
10      2.5 percent. What does --

11      A       That means for -- with all of the other variables set to  
12      their mean value, so we can conceptualize that as the mean  
13      voter, that that mean voter who was black is 2.5 percentage  
14      points or, if we use the zero/one probability range, .025 less  
15      likely to vote than someone who is not black. Similarly, an  
16      average voter who was Hispanic is 7.1 percentage points less  
17      likely to vote than someone who is not Hispanic. Someone who  
18      resides in a student ward is 6.7 percentage points less likely  
19      to vote than someone who does not live in a student ward. And  
20      someone who does not show up as possessing an ID or a license is  
21      almost 19 percentage points less likely to vote. And so this is  
22      a way of allowing for a direct comparison of the underlying  
23      probabilities across all of the models and variables. So these  
24      are -- it's reasonable to think about these as the rough  
25      equivalent of an underlying linear regression coefficient

1 because you can compare these directly.

2 Q Okay. And so what does that mean -- or what does this  
3 address in terms of the effects of the laws being challenged in  
4 this lawsuit?

5 A There are a couple of ways to approach it. That we cannot  
6 observe the specific effect of each one of these changes on a  
7 specific person because we cannot observe whether any specific  
8 African-American or Latino person has had trouble surmounting  
9 one of these obstacles. You actually can't make a statement  
10 about the underlying registration difficulties, the proof of  
11 address, the Special Registration Deputies, because we are only  
12 observing people who have already registered. So these people  
13 who have registered have already surmounted any of those  
14 burdens.

15 So using this analysis, I can't make any claims about how  
16 difficult it is for people to register because by the time I'm  
17 able to observe their behavior, they're registered. It also --  
18 I can't specifically identify, for example, what effect the  
19 restriction on early voting has had because the SVRS does not  
20 contain information about whether someone voted -- it does  
21 usually record whether someone voted absentee or not, but it  
22 doesn't tell me whether they voted in person or by mail. It  
23 doesn't tell me when they submitted their ballot. I can't  
24 observe that. But it does tell me -- the two pieces of  
25 information that are most discrete is that we know based on

1 existing literature that photo ID laws suppress turnout, and  
2 these are not inferential studies any longer. We now have  
3 specific data from actual elections on the effect of turnout  
4 based on photo IDs.

5 We also know the effect on students that have particular  
6 requirements, that it's students, particularly thinking of  
7 out-of-state students who face specific burdens that in-state  
8 students do not. If I am a resident of Minnesota who attends  
9 UW-LaCrosse, I am less likely than a Wisconsin resident to  
10 surrender my Minnesota driver's license to get a Wisconsin photo  
11 ID or driver's license for the purposes of voting. That means  
12 I'm restricted to one of the other forms of ID. If I have a  
13 passport, I'm fine. I might have to use my student ID, but  
14 using a student ID, even if it's a qualifying form of  
15 identification with the signature, issuance and expiration date,  
16 in addition to that I still have to show proof of enrollment, so  
17 there are higher burdens that apply to students. So I can  
18 directly estimate the effect of those variables just as I can  
19 observe the effect of photo ID.

20 Probably the main point about these is that these effects  
21 are statistically significant. They are all in line with the  
22 broader literature about the effect of these changes on turnout,  
23 and they are all in the expected direction. There's nothing  
24 that is surprising here in terms of thinking about the likely  
25 consequences of these changes and the effects on individuals.

1       Now, we can also -- we will get to this ahead, but we now have  
2       data from two elections where the photo ID laws have actually  
3       been in effect.

4       Q      Right.

5       A      Here I'm drawing an inference based on the fact that there  
6       were significant numbers, in the hundreds of thousands, of  
7       registered voters who believed the photo ID was in effect. Now  
8       we no longer have to concern ourselves with survey data because  
9       we have actual election results and concrete consequences for  
10      people who don't have a photo ID.

11      Q      Okay. And so maybe you can walk us through like you did  
12      with table 7 briefly what the significance of the various  
13      columns are here.

14      A      So each column corresponds to the same column --

15      Q      Can I just ask before we get there, is this an  
16      individual-level analysis or an aggregate?

17      A      This is an individual-level analysis. I'm observing the  
18      behavior of each individual. I can observe whether they vote or  
19      not. I can observe all of these variables. I know how long  
20      they've been in the SVRS, so this is an individual-level  
21      analysis.

22      Q      Okay. Go ahead.

23      A      So each column in table 8 corresponds to the same column in  
24      table 7. Now, I didn't produce the underlying probabilities for  
25      all of the variables, just for clarity's sake. I'm not really

1           interested in what the underlying probability is for someone who  
2           is between the ages of 55 and 64. And so we can compare, for  
3           example -- well, let's take just as one example, if you look at  
4           Model 1, we see the probabilities of these variables,  
5           African-American, minus 2.5 percent; Hispanic, minus 7.1; and so  
6           on. The second table is the --

7           THE COURT: The second column you mean? Stick with  
8           that first -- just as simply as you can, so a black voter was  
9           2.5 percent less likely to vote in 2014 than in 2010?

10           THE WITNESS: I would say 2.5 percentage points. So it  
11           would go from 60 to 57.5, from 30 to 27.5 based on the other  
12           variables. It's percentage points.

13           THE COURT: Okay. And that's a comparison between what  
14           you would have predicted for the voter in 2010 versus the  
15           behavior in 2014.

16           THE WITNESS: Not precisely. That's comparing black  
17           and nonblack voters. The 2010 would be Control C1, which is the  
18           third column.

19           THE COURT: Okay.

20           THE WITNESS: Which shows that in 2010 based on the  
21           population of registrants who were in the SVRS as of 2006, that  
22           African-Americans are actually -- an African-American registrant  
23           was more likely to vote in 2010. And most of the other  
24           variables are in line with what we observe in 2014 except if you  
25           observe the -- if you compare the 2014 probabilities to the 2010

1           probabilities, they all go down, and that signifies these  
2        effects are -- these variables are showing effects in 2014 that  
3        we don't observe in 2010.

4           THE COURT: Okay. Point that out to me because I'm  
5        trying to figure out the impact of the changes and the main one  
6        being the imposition of the voter ID requirement.

7           THE WITNESS: Right. If we look at the no ID, that in  
8        2010 someone who does not show up as possessing a photo ID is  
9        3.5 percentage points less likely to vote than someone who does  
10       possess a photo ID. And that reflects the fact that because  
11       there are differentials, people who don't possess voter ID are  
12       more likely to be African-American -- I mean other evidence  
13       shows that they tend to have lower socioeconomic status, so it's  
14       not surprising that people who don't possess a photo ID are  
15       slightly less likely to vote even if there's no photo ID  
16       requirement.

17           THE COURT: Okay.

18           THE WITNESS: But what you observe if you compare that  
19        minus 3.5 percentage points to 2014, it goes up by a factor of  
20        five. So it's five times larger reflecting the fact that there  
21        is now in 2014, at least among hundreds of thousands of  
22        registrants, a belief that photo ID is in effect, and the  
23        expectation is that belief would cause many people simply to not  
24        present at the polls. So it's not surprising that the effect is  
25        significantly larger.

1                   MR. SPIVA: And I notice that -- sorry, Your Honor.

2                   Did you have another question?

3                   THE COURT: No, keep going. I'll fill in with more  
4                   questions as they come up.

5                   BY MR. SPIVA:

6                   Q      I notice that there's a flip sign, I guess, in the student  
7                   ward row I believe between Control C1 and Control C2. Can you  
8                   address that?

9                   A      So what I think is probably going on there is the -- I am  
10                  observing presence in a student ward in 2015 -- or 2014 based on  
11                  where a voter lives in 2015. It makes intuitive sense that  
12                  populations in student wards are going to be more mobile than  
13                  other populations because people who go to college and reside in  
14                  a student ward, they're not going to move there permanently. So  
15                  there is also an issue that someone who is -- at each point in  
16                  any of these models, I have removed people who are too young to  
17                  vote. So if I have someone who is 18 in 2014, they actually are  
18                  not in the model in 2010 because they would be too young to  
19                  vote. They would be 14. So I simply removed them because you  
20                  couldn't say, well, a 14-year-old didn't vote. That would  
21                  completely bias all of the estimates.

22                  And so what I suspect is probably happening with student  
23                  wards is that we're capturing slightly different populations.  
24                  That someone who is 18 years old or actually someone who was 22  
25                  years old in a student ward in 2014, they will still show up as

1 residing in a student ward in 2010 because I'm observing their  
2 residence at a snapshot. They could easily have lived someplace  
3 else. So I think that's probably what's going on there. I  
4 think that's probably one reason for that sign being different.

5 Q Okay. I want to pause on table 8 for a minute, and I want  
6 to just ask you to explain the whole student -- how you got to  
7 the student ward and the student figures. Let's go to your  
8 initial report. We're going to come back to table 8, updated  
9 table 8, but let's go to figures 1 and 2. Why don't we start  
10 with page 30 of your initial report, figure 1.

11 A So we're switching gears here a little bit because now  
12 we're moving from an individual-level analysis to an aggregate  
13 analysis to supplement the effects that we've already observed.  
14 I had reason to believe that the photo ID law would have a  
15 specific effect on students because of the nature of the law,  
16 the fact that there are lots of out-of-state students who go to  
17 college in Wisconsin, either at one of the UW system campuses or  
18 one of the private campuses, so I wanted to identify what those  
19 effects would be.

20 So what I did is I began with a list of all four-year --  
21 nonprofit four-year colleges and universities that were  
22 identified in what's called the Carnegie Classification of  
23 Institutions of Higher Education. It's a list that used to be  
24 maintained by the Carnegie Foundation. It's now shifted, I  
25 believe, to Indiana University, and that shows for each

1 institution the number of students, its address, and so -- and  
2 also they also have a list for technical colleges and for-profit  
3 colleges which I removed because I was more interested in the  
4 four-year campuses.

5 It gave me -- for each institution on that list with an  
6 enrollment of more than 500, I had a list of -- I can't remember  
7 what the exact number was. I think it was something like 34  
8 institutions of higher education, and I had their address. What  
9 I did is I geocoded those addresses using a web tool that will  
10 convert a street address into a latitude and longitude. I then  
11 imported that onto a geographic information software system  
12 called Maptitude which I use, and that shows me on a map of  
13 Wisconsin where each of these institutions are. I also have in  
14 that GIS system a ward map that shows me the boundaries of every  
15 ward, every 6,580-some wards in the state, and so now I know  
16 where the colleges and universities are. I know which wards  
17 they exist in, and so I used a two-step process.

18 I counted as a student ward any ward in which a portion of  
19 these campuses were located. And so in the University of  
20 Wisconsin, there were wards that actually comprised the dorms  
21 and University Heights, and those are all counted. I then moved  
22 one by one out -- basically concentric circles out to outlying  
23 wards and counted as a student ward any contiguous or nearby  
24 ward that had a population of 18 to 24-year-olds in that ward of  
25 higher than 10 percent, and I counted that as a student ward.

1           The list of the student wards you can see in my report  
2 beginning on page 42 with appendix 1 which shows the wards that  
3 I identified as student wards. It shows the college or  
4 university, and it shows the percentage of students or the  
5 percentage in each of those wards of 18 to 24, and you can see  
6 that for most of them sometimes they're all 18 to 24-year-olds.  
7 The City of Eau Claire, Ward 20, 95 percent of the residents of  
8 that ward are between the ages of 18 to 24, and that's actually  
9 part of the UW-Eau Claire campus. So this gives me a measure of  
10 which wards are likely to have large populations of students.

11 Q       Okay.

12 A       And so each registrant who resided in a student ward or  
13 showed up as residing in a student ward, that was a dummy  
14 variable that took the value of one for each of those  
15 registrants. Figures 1 and 2 supplemented that individual  
16 result by -- I did a calculation in each ward in the SVRS. I  
17 know how many people voted. I know how many people are in the  
18 ward. I can, therefore, calculate the turnout, the percentage  
19 of people in each ward who voted in 2014.

20 Q       What are the pink or red -- my wife claims I'm colorblind.

21 A       The maroon "X"s, those are the student wards.

22 Q       Okay.

23 A       What you can see in 2014, that blob of blue dots in the  
24 upper left-hand corner, you know, there's a negative -- the "X"  
25 axis here is the percentage of registrants in each ward that

1       don't show up as having an ID. You can see for most of the  
2       wards, the middle of that blob is going to be right around 7  
3       percentage points. We can consider that roughly the mean. It's  
4       pointing in the -- it points downwards so that as you have more  
5       registrants in a ward that don't possess an ID, the turnout goes  
6       down. It's not a terribly strong relationship, but if you add  
7       the student wards which are the maroon "X"s, you begin to see a  
8       clear pattern. That in student wards you're likely to have many  
9       more people showing up or a much higher percentage of residents  
10      in those wards do not show up as possessing an ID, and, again,  
11      that's entirely consistent.

12       If you are looking at UW-Madison with large numbers of  
13      out-of-state students, Eau Claire, LaCrosse, Beloit,  
14      St. Lawrence, universities and colleges that attract large  
15      numbers of out-of-state students, an out-of-state student from  
16      Illinois, Minnesota, California, New York is unlikely to  
17      surrender their driver's license to get a Wisconsin photo ID.  
18      And the "Y" axis is turnout, and it shows there's a strong  
19      negative relationship. The higher the percentage of registrants  
20      in a ward that don't possess an ID, the lower turnout in that  
21      ward, and so that's -- normally I wouldn't rely exclusively on  
22      an aggregate analysis like this, but this supplements the  
23      individual-level analysis. It shows us this is real. That the  
24      effects that we observe at the individual level also occur at  
25      the aggregate level.

1           And then figure 2 is the same figure for 2010, and there's  
2 still a couple of things that are noteworthy here. First, the  
3 big blob of blue dots looks more like a circle. It doesn't look  
4 like a downward pointed -- an ellipse that points down and to  
5 the right. The percentage of ID, and again, this is people who  
6 are in the SVRS as of 2010, so I have removed all of the people  
7 who were registered after 2010. And what this demonstrates, as  
8 I said earlier, it's likely that some of this is due to the fact  
9 that the population of registrants in 2010 is probably going to  
10 be a little older than it is in 2014 because I have removed lots  
11 of people who have registered after 2010, but it demonstrates  
12 that there is no real significant effect of ward level ID  
13 possession rates and turnout. It's still negative, right, and  
14 again that's what you would expect even if there were no -- if  
15 photo ID were not an issue because of the demographics of the  
16 population that is unlikely to possess or the disparate  
17 possession rates of ID, and so I take this as evidence that we  
18 see a strong effect in 2014 and a much weaker effect in 2010.

19       Q     Okay. Why don't we go back to --

20           THE COURT: I'm going to suggest maybe this is a time  
21 where we can take our afternoon break. So why don't we  
22 reconvene at 4:35, and then we'll press on at that time.

23       MR. SPIVA: All right. Thanks.

24           (Recess taken 4:19-4:48 p.m.)

25           THE COURT: All right. Let's just pick up where we

1 left off and keep going.

2 BY MR. SPIVA:

3 Q All right. Turn back to updated table 8, which is on page  
4 13 of your rebuttal report, Dr. Mayer, PX43. Just wanted to ask  
5 you if you can explain the columns in table 8, updated table 8,  
6 that are labeled Control C1 2006 to 2010 and Control C2 2006 to  
7 2014?

8 A So this is the control that I was referring to before, and  
9 I had the wrong columns. Because we know that there's churn in  
10 the SVRS, it's important to, as much as you can, try to isolate  
11 the effects of the people who have been in the SVRS over a point  
12 in time. So Control C1 and Control C2 examine the vote in 2010  
13 in Control C1 and then the Control Model C2 is voting in 2014,  
14 but these are both for the exact same cohort of people, that  
15 these are people who have been in the SVRS for the full range  
16 from 2006 all the way to 2015, and we can tell that that's the  
17 right cohort if we go back and look at updated table 7, and you  
18 look at the row at the bottom which is the "N," that tells me  
19 how many people, how many registrants are in the analysis, and  
20 you can see for both C1 and C2 it's 1,990,330.

21 THE COURT: So that cohort for C1 and C2 is voters who  
22 have been in the SVRS since 2006, which I gather is the  
23 inception of the --

24 THE WITNESS: That's correct.

25 THE COURT: -- of the SVRS.

1                   THE WITNESS: That's correct.

2                   THE COURT: So that's the cohort that's been in there  
3 all along. Doesn't mean they actually voted in 2010.

4                   THE WITNESS: That's correct.

5                   THE COURT: This is just an analysis of voting in --  
6 Control C1 is an analysis of their voting in the 2010 election  
7 of those voters -- I'll use that; I guess they're really  
8 registrants -- who are in the cohort of people who have been in  
9 the SVRS since inception, and then Control C2 is your analysis  
10 of their voting in the 2014 election, again for that same group  
11 of people.

12                  THE WITNESS: Precisely.

13                  THE COURT: Okay.

14                  THE WITNESS: So this is a direct apples-to-apples  
15 comparison, and if we look at the -- just to pick out a couple  
16 of variables of interest -- if we look at the coefficients for  
17 student wards, which is for Control Model C1 it's .09. For  
18 Control C2 -- and, remember, these are the same people.

19                  THE COURT: Yeah.

20                  THE WITNESS: Voting in 2014 the effect of this  
21 coefficient goes from --

22 BY MR. SPIVA:

23 Q       So you're on table 7, right?

24 A       Correct.

25 Q       Okay.

1       A     Well, actually I guess we can go back to table 8 since now  
2     we're looking at probabilities. That's probably the best way to  
3     think of it.

4       Q     Yeah.

5       A     So if we look at the effect of being in a student ward for  
6     Control C1, which is voting in 2010, it's plus 2.2 percent, and  
7     if we look at those same people in 2014, the effect of being in  
8     a student ward goes down. Again, even accounting for the fact  
9     that there is going to be some mobility and the fact that we  
10    observe someone residing in a student ward in 2014 does not  
11    necessarily mean that they actually voted in that same ward in  
12    2010. We're observing essentially a cohort effect comparing  
13    voting behavior prior to any of these laws going into effect  
14    with 2014 with most of them going into effect.

15           THE COURT: And, again, just to be clear on the student  
16    ward one because this one is a little, I guess to use the  
17    statistical term, funky, these are people who lived in a student  
18    ward in 2015.

19           THE WITNESS: Correct.

20           THE COURT: And so we don't know where they lived or  
21    where they voted in 2010, and your surmise is that a significant  
22    number of them actually didn't live or vote in student wards in  
23    the 2010 election.

24           THE WITNESS: That's likely.

25           THE COURT: Okay. All right.

1                   THE WITNESS: But if we look at the effects of not  
2 having an ID between 2010 and 2014, we observe that they don't  
3 have an ID in 2015. It's likely that that didn't change. If  
4 they didn't have an ID in 2015, it's likely that they didn't  
5 have an ID in 2010. I mean, it's possible that someone could  
6 have had an ID in 2010. It expired and it dropped out of the  
7 database, but I think that's unlikely.

8                   THE COURT: Then you've got this other little tweak  
9 that you have to do on the age or on the -- well, for all of the  
10 voters, for voters who in 2010 were -- I'm sorry, 2015 -- were  
11 not of voting age in the 2010 election, you had to take them  
12 out.

13                  THE WITNESS: That's correct. So I actually  
14 recalculated the ages for each election. So someone who showed  
15 up as 24 in 2014, they are 20 in 2010. So I recalculated the  
16 ages to account that you go back in time, people get younger.

17                  THE COURT: Okay.

18 BY MR. SPIVA:

19 Q       Did you figure out how to do that?

20 A       It works in Stata. And here you can see that the effects  
21 of not possessing an ID, the effect essentially quadruples.  
22 It's minus 3.5 percentage points in 2010. It goes up to minus  
23 14.5 percent in 2014.

24                  THE COURT: Okay. And we're talking about the November  
25 election 2014?

1                   THE WITNESS: That's correct.

2                   THE COURT: Okay. And, again, I'm trying to keep  
3 track, voter ID was not actually in effect at that time.

4                   THE WITNESS: That's correct, although the evidence is  
5 that substantial numbers of people were confused about it, that  
6 at a minimum we're talking probably 700,000 registrants believed  
7 it was -- mistakenly believed it was in effect, and so really in  
8 a way that, you know, 2010 is the control when none of these  
9 things were in effect, so it's a way of drawing an inference  
10 about the overall effect of these changes between 2010 and 2014.  
11 At this point it is still an inference.

12                  THE COURT: Yeah. Although again, to be clear about  
13 it, it's only the post-registration, unless I'm missing  
14 something here --

15                  THE WITNESS: That's correct.

16                  THE COURT: -- only the post-registration changes that  
17 are tested here because you've got to get through the  
18 registration hurdles to get into the --

19                  THE WITNESS: That's correct. So these would amount to  
20 the changes in absentee voting, the reduction in the number of  
21 days and hours, the end of late weekend registration and so on.  
22 Actually, not late weekend registration. It would be late  
23 weekend early voting.

24                  THE COURT: Exactly.

25 BY MR. SPIVA:

1       Q     And what -- so what is, for instance, the column that's  
2           labeled -- the column -- rather the rows labeled "black" and  
3           "Hispanic" under those two control groups. What does that tell  
4           us?

5       A     So those show largely the same pattern, that for the same  
6           cohort, and obviously demographics are not going to change --  
7           those are constant over the same period -- but the effect of --  
8           for a black registrant was actually 3.2 percentage points more  
9           likely to vote in 2010 and minus 0.8 percentage points less  
10          likely to vote. One of the reasons this -- these numbers or  
11          these coefficients are somewhat smaller than for the other  
12          models is that we're looking at a cohort who has been in the  
13          SVRS. They're going to be older. They're going to have more  
14          experience voting, and so you can't directly compare people who  
15          have been in the SVRS since 2006 to people who registered for  
16          the first time in 2014, but it's a way of basically changing the  
17          entry point, and in this case the entry points are the same, so  
18          we actually can draw an inference because we're looking at the  
19          same people.

20       Q     And what's that inference?

21       A     The inference is that for most voters, for African-American  
22          voters, for voters in students wards, for voters who didn't  
23          possess an ID, that there was a significant decrease in their  
24          likelihood of voting. For Hispanics it actually goes up a  
25          little bit, but that reflects the fact that turnout among

1           Hispanics is dramatically lower than it is for any other major  
2 demographic group, and so you would expect the numbers to bounce  
3 around a little bit.

4           Q     Go back to His Honor's point from a minute ago that this  
5 only deals with registered voters. Would you expect there to be  
6 some kind of a deterrent effect to registration among people who  
7 don't have IDs?

8           A     Certainly reasonable to expect that, that the barriers  
9 would consist in two ways. One is that we know -- the evidence  
10 is that these changes made it more difficult to register. I  
11 have some data on the number of people who registered with  
12 corroboration. There is evidence that these effects have  
13 deterred people, but it's also that if I'm not registered and I  
14 know I don't possess an ID and I either -- I know when it is in  
15 effect that I need it or I mistakenly believe that I need it,  
16 why go to the trouble of registering if I don't believe that I'm  
17 eligible to vote. So certainly you would expect to see a  
18 deterrent effect at both stages, but, again, at this point in  
19 the analysis I'm only observing people who have already  
20 surmounted the barriers to registration.

21           THE COURT: I want to make sure I'm not misperceiving  
22 this data point here because it's a little -- I guess it's  
23 surprising to me because I know that African-American turnout  
24 was very high in 2008 and 2012, but this suggests that in 2010 a  
25 black member of that cohort that's in Control C1 was actually

1           3.2 percent more likely than a nonblack voter to vote.

2           THE WITNESS: Right. And that could be -- that's a  
3           function that we're looking at a particular and unrepresentative  
4           cohort of people who have already registered. So if you look at  
5           the overall turnout figures among African-Americans -- we're  
6           looking at turnout as a percentage of the citizen voting-age  
7           population of the voting-eligible population -- that's where  
8           you're going to see the effect. I'm looking at turnout only  
9           among registered voters, so that differential is going to be  
10           somewhat smaller.

11           We saw or heard from Professor Burden yesterday that the  
12           gap between black and white turnout has been decreasing over  
13           time, and I think 2008 was the first election probably since the  
14           1870s, if not ever, where actually it was perfectly  
15           proportional, that the African-Americans voted, made up the same  
16           percentage of the electorate that they -- the same percentage as  
17           their percentage of the citizen voting-age population.

18           THE COURT: All right. Also another point here is that  
19           the only variables that are really subject to analysis here are  
20           the ones in -- I guess the ones in table 7.

21           THE WITNESS: That's correct.

22           THE COURT: So, for example, income is not --

23           THE WITNESS: That's correct.

24           THE COURT: -- factored in here. Educational  
25           achievement isn't factored in here.

1                   THE WITNESS: That's correct. In thinking about this,  
2 I thought about putting information -- since I know where people  
3 live, that I could have put in information about the average  
4 income or the median income or the median educational  
5 attainment, but where that gets kind of tricky is now I'm sort  
6 of mixing individual and aggregate data, and I wanted to keep  
7 this as tightly constrained to the individual --

8                   THE COURT: But if there were variables that correlated  
9 with race, for example, so if educational attainment was  
10 negatively correlated with race, this analysis wouldn't  
11 distinguish between the effect of educational attainment and  
12 race.

13                  THE WITNESS: That's correct. Since I don't have any  
14 information about the education or income of any of the  
15 registrants, I can't make any claims about those effects.

16                  THE COURT: Okay.

17                  BY MR. SPIVA:

18 Q               And that's correct, but that would apply in both 2010 and  
19 2014; isn't --

20 A               Certainly. Those effects would not -- I don't think those  
21 effects would change significantly from one election to the  
22 next.

23 Q               So could the reduced probabilities of voting of the various  
24 groups that you've identified be the result of roll-off or  
25 churn?

1 A I don't think so. So we know that people --  
2 Q Can you explain what those --  
3 A Roll-off is that people move in and out of the SVRS  
4 continuously. Again, I'm observing the SVRS at a particular  
5 snapshot. I don't know what the SVRS looked like in November of  
6 2010. What I can observe is that people who were in the SVRS in  
7 2010 who are still in the SVRS in 2014 or 2015, there are  
8 certain numbers of people who are going to fall off of the SVRS.  
9 They are going to move. They are going to die. They are going  
10 to be removed through the list maintenance, and by definition I  
11 can't observe them. And we know that happens because if you  
12 look at the number of people in the SVRS in 2015 who show up as  
13 voting in 2010, that's smaller than the actual number of people  
14 who voted by a couple hundred thousand people. But what I am  
15 looking at -- so that's one form of roll-off. I can't observe  
16 the behavior of people who have dropped out.

17 It is also possible that there are people who remain in the  
18 SVRS, so they're still on the voter rolls, but they have done  
19 the equivalent of rolling off, but they just haven't been  
20 removed yet. It's unlikely for people who have died because the  
21 GAB routinely does matching to remove people who have died.  
22 They remove people who have been convicted of felonies. But,  
23 you know, people move. Someone could move out of state and not  
24 update their registration. But I don't think that's going to be  
25 a huge number of people, and the only way that would make a

1           difference is if the propensity to roll off the SVRS is  
2           correlated with an underlying propensity to vote.

3           So if people remain on the SVRS in 2014 even though they  
4           are not going to vote, that the people who are in that category  
5           are less likely to vote than the people who stay on the SVRS,  
6           and I don't think the evidence is conclusive that that's what's  
7           going on. We know that there are lots of voters who roll off  
8           the SVRS because we can actually compute that directly. We know  
9           that nonvoters roll off the SVRS. But what -- I've already  
10          removed everybody who has entered the SVRS after the election,  
11          so I've already controlled for one problem, and the only way  
12          that this would have a significant effect is if for some subset  
13          of the SVRS that wasn't able to vote in 2014 was somehow able to  
14          vote in 2010, and to the extent that the roll-off is going to be  
15          correlated with the lack of propensity to vote, we would expect  
16          that someone would be similarly unlikely to vote in 2010.

17          So I concluded that -- and the other part of that is that  
18          if that roll-off was a problem, that you would see a uniform  
19          effect. The farther back you go, that you should see a uniform  
20          effect with the coefficients either getting larger or smaller as  
21          the nonvoters roll off, and that's not what you see. And that's  
22          one of the reasons I used a variety of starting and stopping  
23          points to try to account for those differences by looking at  
24          different cohorts, and what I conclude is that the size of the  
25          effects doesn't depend on when people entered the SVRS.

1       Q     And you may have just answered this, but you're aware, of  
2 course, that Professor McCarty, one of the defense experts, has  
3 attributed the probabilities that you're -- that you've put  
4 forth as a result of roll-off or churn, and do you have a  
5 response?

6       A     The difficulty with that argument is that those criticisms  
7 are based almost entirely on aggregate turnout where Professor  
8 McCarty computed an aggregate percentage turnout in 2010 in a  
9 couple of different ways. He weighed it and tried to correct  
10 for differences, and there is a real limit to what those kinds  
11 of statewide aggregate effects can tell you. I'm making  
12 statements about the effects of these changes on individuals.  
13 I'm not making -- I do have some statements about aggregate  
14 effects at the beginning of the report, but that was just --  
15 that was part of the way that I approach large databases. I  
16 like to poke at them and see what they're telling me and try to  
17 understand the nature of the data. I actually didn't draw any  
18 of my conclusions from that aggregate result. All of my  
19 conclusions are based on either this individual level of results  
20 or some of the ward level analysis that I did.

21      Q     What's wrong with drawing conclusions based on aggregate  
22 turnout in the way that Professor McCarty did?

23      A     If you go back to the state's opening argument, the fact  
24 that turnout was high in the April 2016 election, well --

25      Q     It was astounding.

1       A     So we know, based on the analysis that I have done and the  
2           evidence, that these restrictions are not going to affect  
3           everybody equally. Most people, based on the possession rates  
4           and some of the stories, I would put it probably between 80 and  
5           85 percent of the eligible voters, whether people are registered  
6           or not, are not going to have difficulty meeting these burdens.  
7           They have an ID. They have a driver's license. They have a  
8           passport. They have stable residences, and so they are not  
9           going to have problems producing the underlying documentation,  
10          and we know that.

11           We also know that there are lots of people who are in that  
12          category who don't vote. Right? Even in the highest turnout  
13          election, you have probably 70 percent, 72 percent of the  
14          eligible population casting a ballot. Typically Wisconsin runs  
15          about 15 percentage points ahead of the nationwide average. So  
16          you still have 30, 35 percent of the eligible population  
17          choosing not to vote assuming that they could satisfy the  
18          underlying requirements. And that population, the percentage of  
19          voters and nonvoters, is going to change. Some presidential  
20          elections it's going to go up. Midterm elections and special  
21          elections and off-year elections it will go down. People will  
22          move in and out based on interest, based on exogenous factors  
23          like campaign spending, competitiveness, interest in the  
24          campaign.

25           So the way to think about it is this: Let's say I have

1           100,000 nonvoters. These are people who aren't voting, but for  
2           one of these exogenous reasons, this 100,000 -- this group of  
3           100,000 people, everybody in that group makes a decision that  
4           they are going to vote. So they are moving from the nonvoting  
5           category into the voting category. Assuming that 85 percent of  
6           people in that group will have no problem meeting the  
7           requirements, you're going to see turnout go up by 85,000  
8           voters. But for that 15,000, whether it's the 9 percent -- 9.8  
9           percent of African-Americans who don't possess a driver's  
10          license or ID, a student in a ward that doesn't possess a  
11          driver's license, the fact that aggregate turnout goes up  
12          actually tells you nothing about the burden on any particular  
13          individual. And this is what Professor Burden was talking  
14          about, the ecological inference problem. That looking at  
15          aggregate turnout, turnout could go up by 100,000 or 500,000,  
16          and even with that turnout going up, that could just mean that  
17          there are actually more people who would like to vote but can't  
18          do it because they would like to become voters but they face a  
19          burden. They don't have an ID; they don't have stable  
20          residencies, and they have trouble producing the underlying  
21          documentation.

22           So the fact that aggregate turnout went up between 2010 and  
23          2014 or between the 2012 presidential primary and the 2016  
24          presidential primary doesn't tell you about the effects on  
25          individuals. It's the wrong unit of analysis, and this is why I

1 did the individual-level burden because it doesn't matter what  
2 happens to aggregate turnout. You could have aggregate turnout  
3 go up, and that just means there are more people that are  
4 affected by these things. You can have aggregate turnout go  
5 down and have more people affected by these things. And it's  
6 well established in the political science literature that the  
7 aggregate effect, an individual effect, there's no reason why  
8 they actually have to have the same signs, and this is sort of  
9 the classic problem of trying to draw inferences about the  
10 effects on individuals using just aggregate outcome, and that's  
11 why I did the individual-level analysis.

12 THE COURT: Just to follow up on that a little bit. So  
13 the exogenous factors that you describe, I'm not sure I  
14 understand how those are isolated apart from the demographic  
15 categories that you've analyzed.

16 THE WITNESS: So --

17 THE COURT: Because I'm looking at 2010. I'm looking  
18 at 2014. There aren't any obvious explanations such as the  
19 explanation for the astounding voter turnout in the 2016  
20 presidential primary here in Wisconsin. So they're a huge  
21 exogenous factor because both parties had very competitive  
22 primary races late enough into the season to make Wisconsin  
23 matter on both sides of the aisle, so that's going to drive  
24 participation up. But when I look here at 2010 and 2014,  
25 nothing comes to mind sort of dramatically, but those effects

1           might still have been there, but I don't see how you would  
2           ferret them out.

3           THE WITNESS: Well, because this is not designed to  
4           ferret out overall turnout. This is not a study of aggregate  
5           turnout.

6           THE COURT: I understand that, but it's still the  
7           things that affected an individual's decision to vote in 2010  
8           compared to 2014 still involve those factors that relate to  
9           their interest in the election and their perceived importance of  
10          the election between those two, and, again, like I said, there's  
11          nothing obvious about the difference between 2010 and 2014. One  
12          of our assumptions here in our -- in the evidence that's been  
13          presented is that those elections are kind of roughly in parity  
14          with the exception of some changes in the voting regime, but, in  
15          fact, there might be differences in interest that mattered to  
16          voters, and I'm not sure how we would have factored that out.

17           THE WITNESS: I would say this, that through this  
18          analysis I don't think that I would be able to say that these  
19          effects you would expect to see based on aggregate because we're  
20          looking at the segment of people who have entered the SVRS at a  
21          particular point in time, and in 2014 you saw lots of people  
22          enter into the registration system because of interest, but I'm  
23          not capturing them here because I'm only looking at people who  
24          entered the SVRS prior to the 2014 election for precisely that  
25          reason. If I'm looking at the effect of these variables just

1 looking at that election, I don't have any voting history.

2 THE COURT: Right.

3 THE WITNESS: I can't control for anything that has  
4 changed. All I'm looking for or all I'm able to observe is the  
5 behavior at that point in time. And this analysis though I'm  
6 able to back up and compare the outcomes that we observe in 2014  
7 to what we observe in previous elections. Now, a change in  
8 aggregate turnout where you have more people registering, that  
9 in a way I've already controlled for that because -- at least  
10 partly because I don't observe anything about the people who  
11 have entered in to --

12 THE COURT: Right.

13 THE WITNESS: -- the system as of 2014. All I have or  
14 what I have is people who have entered at some previous point.  
15 I can examine their behavior in the June recall. I can examine  
16 their behavior in 2010, the gubernatorial election. I also  
17 don't have anything in here about the presidential elections  
18 because there's nothing to compare it to. I'd be looking at  
19 2012, and so I think the --

20 THE COURT: So the control really is that you have  
21 somewhat habituated voters here in the cohorts that are your  
22 Control C1 and Control C2 because those people have been in the  
23 system for a long time. So you're taking out the impact of  
24 voters who have registered for the first time so that they could  
25 vote in 2014, for example.

1                   THE WITNESS: Correct. Now, as we will see when we get  
2 to the data from 2016, we actually do have concrete evidence of  
3 what happened there where there were people who were registered  
4 who were actually barred from voting because they didn't have an  
5 ID.

6                   THE COURT: Right.

7                   THE WITNESS: And so, again, these are inferences. We  
8 know that some things change, and we know that voters believe  
9 that other things had changed, but this type of analysis given  
10 the limits of the data -- I don't have data on educational  
11 attainment and so forth.

12                  THE COURT: Right.

13                  THE WITNESS: I am, because of the data, limited to  
14 these demographic variables, but the effects that I observe are  
15 entirely consistent with other studies that actually have taken  
16 those things into account. So I'm -- I haven't captured  
17 everything, but I am confident that these effects that I -- that  
18 we are observing are real, and they're not due to any underlying  
19 artifact of the modeling or the cohorts or the roll-off or  
20 roll-on. I have attempted to control for each of those things  
21 in the course of doing this analysis.

22                  THE COURT: Okay.

23 BY MR. SPIVA:

24 Q                What is the literature on this issue? Is there a consensus  
25 or --

1       A     I would regard the recent evidence as not consensus as it's  
2     almost unanimous. Just to give you one example, there's just --  
3     actually two examples. The Government Accountability Office did  
4     a study of aggregate turnout comparing turnout in states with  
5     strict voter ID to turnout in states without strict voter ID,  
6     and they concluded that strict voter ID has a depressive effect  
7     that actually is disproportionate on racial minorities and young  
8     people.

9                  Another piece of evidence is a study that Professor Hood  
10    did, the defense expert. His study, which was actually an  
11    individual-level study of voter ID in Georgia, and I cited it in  
12    my rebuttal report, his own work concludes that voter ID  
13    depresses turnout and has specific depressive effect on  
14    particular populations so --

15      Q     Is that the "Much Ado About Nothing?" article --

16      A     That's correct. So there was a literature that emerged in  
17    2006 to 2008, 2009, when these laws -- some of these laws had  
18    just gone into effect. You had really Indiana was the only  
19    state that had a strict voter ID, and at that point scholars  
20    looked at the issue and concluded that there really wasn't  
21    enough data to make a conclusive determination. That is no  
22    longer true. We have data from a large number of states with  
23    strict voter ID. We have new data on additional election  
24    cycles. I would characterize the contemporary literature as  
25    virtually unanimous that photo ID laws depress turnout, and they

1           depress turnout particularly among -- have a disparate effect on  
2           particular racial and demographic minorities.

3           Q       Now, I just want to go back to this issue of the fact that  
4           the voter ID law wasn't in effect in the 2014 election because  
5           of the Supreme Court injunction at the time. So can you explain  
6           again how you can attribute an effect to it given that it wasn't  
7           in place?

8           A       So sitting here, without reading the report, I don't think  
9           I could actually characterize the sequence of events, but the  
10          shorthand is that it was upheld and joined, reversed. I mean,  
11          it's a complicated sequence of events --

12          Q       Which you do lay out in your --

13          A       I do. The result is I cited a Marquette poll from October  
14          of 2014, actually I think it was about 54 percent of registered  
15          voters said they believed that they would have to show photo ID,  
16          and that applied to the SVRS of about 3.4 million people, you're  
17          looking at 1.7 million registered voters who believed they would  
18          have to show photo ID. I know that there was a subsequent poll  
19          taken later in October that showed it was closer to -- it was  
20          actually about 25 percent said they believed it was in effect or  
21          they weren't sure. But even if it's 20 percent or 25 percent,  
22          you're still talking about 750,000, 800,000 registered voters  
23          who believed that the photo ID law was in effect.

24           And so if anything, what this means is that the effects  
25          that I observe are actually smaller than what they would be if

1           you actually observe what happened once the law was into effect.  
2           I didn't have the data to do the analysis for April 2016, but I  
3           am certain that if I were able to replicate the analysis here,  
4           it would show that the effect was at least as large, probably  
5           larger, because we now know that there are hundreds of people,  
6           probably thousands, who were actively prohibited or  
7           disenfranchised and simply unable to cast a ballot.

8           Q        Let me just pause and see that -- I don't think there's any  
9           objection to PX43, which is Dr. Mayer's rebuttal report.

10           MR. JOHNSON-KARP: No objection.

11           THE COURT: Okay. I'll admit that too.

12           MR. SPIVA: Thank you.

13           BY MR. SPIVA:

14           Q        Dr. Hood points to some data from elections in 2015. Did  
15           you look at that data or do you think that it's appropriate to  
16           draw any inferences based on those elections?

17           A        So Professor Hood is arguing, and this is --

18           Q        Are you looking for it in your rebuttal report?

19           A        Yes. This is page -- Professor Hood argues that evidence  
20           from elections in 2015, again, this was -- that he examined a  
21           series of elections that were held in 2015 after the photo ID  
22           law had gone into effect and argued that because there were only  
23           six provisional ballots that were issued in these elections,  
24           that that's evidence that the law was not preventing anybody  
25           from voting.

1           Now, I pointed out in my report that there are two errors  
2 with that. One is an inferential error, that these special  
3 elections were uniformly tiny turnout elections. Some of them,  
4 you know, a few thousand people. These were special elections,  
5 school board referenda, school board elections. I think the  
6 highest turnout election was an assembly special election where  
7 I think you had 15 percent turnout, and it's well known in the  
8 literature that people who -- people who turn out in these  
9 elections are almost always going to be the most highly  
10 motivated and engaged voters. I mean, I'm a highly motivated  
11 and engaged voter, and there are some school board elections  
12 that I haven't voted in. And so the people who are most likely  
13 to vote in these elections are the ones who are -- these are the  
14 most engaged, the most education, highest income. They're more  
15 likely than not to have -- they're very likely to have one of  
16 the forms of qualifying IDs. So looking at these special  
17 elections really tells you nothing about the effect.

18           Professor Hood, again in his own work, has argued that  
19 looking at provisional ballots is the wrong indicator because it  
20 doesn't tell you anything about people who might want to vote  
21 but decide they're not even going to present at the polls  
22 because they know they don't have an ID, why even bother, and he  
23 argued that. It was actually in the same "Much Ado About  
24 Nothing?" article. So the way I characterized it in my report  
25 is there's an inferential error, which is these elections don't

1       allow you to draw any inferences about what's going to happen in  
2       a presidential primary or in an on-year presidential election,  
3       and the other is they don't tell you anything about people who  
4       simply don't present at the polls, and the way that you can tell  
5       that is he phrases his claim that Act 23 does not prevent voters  
6       from casting ballots, applies to individuals, quote,  
7       participating in these elections.

8           So he's limiting his inference to the people who have  
9       already chosen to come out, and, you know, the fact is in his  
10      own published work he's argued that this is the wrong indicator,  
11      and I think there's very clear and compelling evidence from  
12      the -- particularly the April 2016 primary where the number of  
13      provisional ballots skyrocketed to -- I don't think that there  
14      has ever been -- actually I'm quite confident that the  
15      provisional ballots only became a thing after the Help America  
16      Vote Act. The number of provisional ballots we saw in April  
17      2016 is five, six, seven times as many as we have seen in recent  
18      even presidential elections. So I regard that inference as  
19      utterly incorrect.

20       Q      And let me just pause for a minute and ask you by way of  
21       your background, you do have a great deal of experience studying  
22       Wisconsin elections, election administration --

23       A      That's correct.

24       Q      Okay. And can you just give a couple of examples?

25       A      I am part of a group of scholars that since I think

1           probably 2009 has been actively engaged in studying elections.  
2           I was -- I joined a group actually headed by Professor Burden  
3           that we worked with the Government Accountability Board with a  
4           contract, a grant that they received from the Election  
5           Assistance Commission to study election administration processes  
6           and advise them on compliance with reporting requirements. We  
7           did a survey of every local election official in the state,  
8           which is over 1,800 election officials. We've published a  
9           number of peer-reviewed articles on election administration  
10          looking at the effect of election laws on turnout, the effect of  
11          administrative burdens, the perceptions of local election  
12          officials and how they perceive the effects, the partisan  
13          consequences of election reform. I have been actively involved  
14          in expert witness work on elections both in redistricting -- in  
15          2011 I was retained by the Prosser for Supreme Court campaign  
16          after the election to advise them on the underlying  
17          probabilities of the recount process, which they went and  
18          advised them about indicators that would suggest that something  
19          had gone wrong, something was awry, and there was nothing. So  
20          I've been studying Wisconsin elections since at least 1995 and  
21          have been studying specifically election administration for  
22          probably the last eight years.

23          Q        Okay. And just by the way, is Prosser a Republican or a  
24          Democrat?

25          A        Well, the Supreme Court races are partisan, but when he was

1           in the state legislature, I believe he was a Republican.

2       Q     And so what is Wisconsin's experience historically with  
3           provisional ballots in terms of numbers?

4       A     Provisional ballots were implemented in the Help America  
5           Vote Act primarily because of the experience in the 2000  
6           presidential election when many thousands of voters, especially  
7           in Florida which was decisive in that election, who presented at  
8           the polls believing that they were registered, and for a variety  
9           of reasons did not show up on the rolls. They had been purged.  
10          They did not appear as registered, and there was a tremendous  
11          controversy about that.

12           The Help America Vote Act established a requirement that  
13           states offer voters provisional ballots when there is a dispute  
14           over their eligibility. In most states the disputes involve  
15           whether someone is correctly registered or is accurately  
16           registered, and so in states like Ohio where you don't have  
17           election day registration, you can see tens of thousands, some  
18           places hundreds of thousands of provisional ballots where people  
19           appear at the wrong precinct, they appear believing that they  
20           are registered when they are not, and instead of simply turning  
21           them away, they are allowed to vote provisionally and given some  
22           time, it varies by state, but are given some time after the  
23           election has occurred to correct the problems.

24           In most cases they can't. Most of the time provisional  
25           ballots are not counted, but provisional ballots have never been

1           a real issue in Wisconsin because if you present at the polls  
2         believing that you're registered and you're not and you're not,  
3         you register on election day. And so whereas other states would  
4         have tens of thousands of provisional ballots because of  
5         disputes over eligibility, I think in the 2014 gubernatorial  
6         election statewide, which had I think 2.1 million votes cast, I  
7         think there were 54. I know in the City of Madison in 2014 with  
8         131 -- 121,000 votes cast, there was one provisional ballot  
9         because the only reason for a provisional ballot would be for  
10        someone who can't prove their residence, and so in those cases  
11        if they didn't have the documentation and could not produce it,  
12        they would vote provisionally and they would have three days  
13        after the election to resolve that, to correct, to cure their  
14        provisional ballot. And so we had virtually none, and there was  
15        no -- it was just not an issue. Well, now we do.

16       Q       Okay. So is there any subsequent evidence of the effects  
17       of these laws, and particularly the voter ID law, from the more  
18       recent elections?

19       A       So there are two pieces of evidence: One relating solely  
20       to Madison which is from the February 2016 Supreme Court  
21       primary, and the other is from the April 2016 presidential  
22       preference primary.

23       Q       Okay. What about the Madison example?

24       A       So in Madison in February -- I don't know the exact date,  
25       but it was a February Supreme Court primary. I think there

1           were -- there was a total of 38,000 ballots cast for that  
2           election in Madison. It was a low turnout affair. And they  
3           had, by my count, 28 provisional ballots. I think Maribeth  
4           Witzel-Behl said 23, but it's immaterial. I'm working from  
5           recollection here. So we have an election that in 2014 you had  
6           121,000 ballots cast, 1 provisional ballot. Now you have an  
7           election where there was one-quarter the number of ballots cast  
8           but 23 times the number of provisional ballots, and almost all  
9           of them were photo ID related. I did not -- I don't know or did  
10          not know how many of them had actually been counted, but she  
11          testified today that most of them -- I think only six of them  
12          were actually cured. So this is concrete evidence that people  
13          are presenting at the polls, and they're unable to cast a ballot  
14          because they don't have photo ID. Other evidence --

15          Q        Let me ask you this -- talking about the April 5th primary?

16          A        The April 5th presidential primary gives you even more  
17          evidence because that's a state -- we now have statewide  
18          figures. I actually don't know off the top of my head --

19          Q        Put up the charts. Can we put up PX463, and this is one of  
20          the ones that we sent you yesterday. I don't know if there's an  
21          objection, but maybe before you answer that I'll ask you where  
22          did the information in this table come from?

23          A        I received data that was represented as being from the GAB,  
24          so it reflects the reporting of the local clerks to the GAB of  
25          the number of provisional ballots that they issued in the April

1       5th, 2016, primary. It's actually a list of every single one  
2       with the voter, the address, the reason for the provisional  
3       ballot, and whether the ballot was ultimately counted or  
4       rejected.

5                  THE COURT: And this is from the GAB?

6                  THE WITNESS: This is from the GAB. This chart is  
7       actually collapsed so the GAB -- it was a spreadsheet with all  
8       375 individuals who cast provisional ballots, and for each  
9       individual it had their name, first name, last name. For about  
10      half of them it had their address. I think for 183 of the 375  
11      it actually had data for address. It had their county, the  
12      reason for the provisional ballot, and whether it was counted or  
13      rejected.

14                 BY MR. SPIVA:

15                 Q       Just to be clear, this was a document that was produced in  
16       discovery in this case --

17                 A       I believe so. And so what I did is I --

18                 THE COURT: Hold on. Is there any objection to the  
19       chart?

20                 MR. KAWSKI: There are no objections.

21                 THE COURT: Okay. I'll admit the chart.

22                 BY MR. SPIVA:

23                 Q       Why don't you go ahead and maybe explain what the chart  
24       shows, and if we can make that a little bigger, that would be  
25       great.

1       A     So what I did is I took that spreadsheet and imported it  
2     into a statistical package that I use that I can manipulate it,  
3     and I collapsed this -- that data to give me figures on how  
4     many -- on the distribution of provisional ballots based on the  
5     reason. And so these are just -- this is just data that was  
6     entered by local clerks. So there were 375 provisional ballots,  
7     which I actually don't believe is -- I think that's a  
8     significant undercount. I don't think that captures every  
9     provisional ballot that was issued, but we'll take that as the  
10    lower bound of that.

11      Q     Why do you suspect it doesn't capture the total universe?

12      A     Well, for a couple of reasons. One is that if you look at  
13     that data and collapse it by municipality, there was only  
14     provisional ballot data in 105 of the state's 1,870-odd  
15     municipalities. There were also some unusual patterns. So  
16     Madison had I think it was 123 provisional ballots, which was  
17     discussed this morning. So Madison has about 5 percent -- about  
18     7 percent of the statewide number of registered voters, and it  
19     doesn't make sense that Madison would have one-third of the  
20     provisional ballots. There was a low number of provisional  
21     ballots that was issued in Milwaukee. Milwaukee has a much  
22     larger -- four times the size of Madison, but they only had 54  
23     provisional ballots, and so I think there were some  
24     inconsistencies across municipalities with the degree to which  
25     provisional ballots were offered, but we can work with this as

1           the lower bound.

2       Q     Okay. So what does PX463 --

3       A     So it shows of the 375 provisional ballots, about 87  
4           percent of them were related to photo ID. So we have the 288  
5           provisional ballots that were listed as being offered for photo  
6           ID. We have 34 provisional ballots in the third line issued  
7           because of Wisconsin driver's license. Now, the file doesn't  
8           specify what this means, but it's a reasonable inference that  
9           this is photo ID related, that someone presented -- the way in  
10          which data is reported from clerks to the GAB either through the  
11          incident reports or the inspectors' reports from what GAB calls  
12          the GAB 190s, clerks enter data in inconsistent ways. One clerk  
13          might have said they didn't have a photo ID; someone else would  
14          have said they don't have a Wisconsin driver's license even  
15          though that's photo ID related. 9 people were issued a photo  
16          ID -- a provisional ballot because of photo ID, Wisconsin  
17          driver's license. So we have 77 percent, 10 percent, which is  
18          87 percent plus 2.4 -- basically have 87 percent of the  
19          provisional ballots were issued basically because the person,  
20          the registrant, the voter, did not have a photo ID.

21           The other three categories are related to documentary proof  
22          of residence. We have the 38 people for proof of residence. We  
23          have 5 people with a combination of proof of residence and photo  
24          ID. One person Wisconsin driver's license, proof of residence.  
25          If you add up 38, 5, and 1, that gives you 44, and that's

1 roughly consistent with the number of provisional ballots that  
2 you would have expected in a Wisconsin election that were --  
3 that were -- what we can call typical based on the pattern.

4 So we know that there were three hundred -- let's add it  
5 up. 43 -- 331 people who were unable to cast a regular ballot  
6 because they didn't have a photo ID, and this is documented.  
7 These are real people. These are people who presented at the  
8 polls. These are people who were not able to cast a ballot  
9 because they didn't have a photo ID.

10 Q Isn't that a small percentage though of the total number of  
11 people who voted?

12 A It's a small percentage of the 1.6 million people who  
13 voted, but if you're in this category and you're  
14 disenfranchised, it's not a small number. And you'll hear me  
15 say this again, but you disenfranchise someone from an election,  
16 prohibit them from voting, you can't unring that bell. There's  
17 no way to remedy that. There's no way to make that person  
18 whole. They've been disenfranchised. They wanted to vote.  
19 They were prevented from voting because of the photo ID  
20 requirement.

21 THE COURT: Let me just ask one thing. I assume -- let  
22 me put it this way. I'm inferring from your comments that you  
23 assume that they were all actually eligible to vote or that they  
24 were all entitled to vote, just lacked the ID. Entitled in the  
25 sense that they were eligible citizens.

1                   THE WITNESS: Well, I am drawing the inference if the  
2 reason they were issued a photo ID -- provisional ballot was for  
3 photo ID, I'm drawing the inference that they were actually  
4 registered because for people who have proof of residence  
5 problems, they were not accurately registered. In fact, I'll  
6 show data in a second that there are large -- there are a number  
7 of voters who have been voting for decades who have been in the  
8 SVRS for years who were unable to have their -- unable to vote.  
9 Now, it's true that some of these votes were ultimately counted.  
10 I have data on the final status of these votes, and about 30  
11 percent of them --

12                  MR. SPIVA: Why don't we put up plaintiffs' exhibit  
13 464.

14                  THE COURT: Is there going to be an objection to 464?

15                  MR. JOHNSON-KARP: No objection.

16                  THE COURT: Okay. That's admitted.

17                  THE WITNESS: So of the 375 provisional ballots, this  
18 shows the final status. 108 of them were counted, so someone  
19 voted provisionally and was able to resolve the underlying  
20 problem. 69 percent were not counted, and, again, this is in  
21 line with the pattern in other states. Most provisional ballots  
22 are not counted. Of the 379, there were 9 that were not listed  
23 as ultimately resolved, so we don't know whether these folks  
24 were counted or not.

25                  BY MR. SPIVA:

1       Q     And let me ask if we could put up -- well, actually, two  
2       questions. Is there literature on whether this is typical in  
3       terms of whether most provisional ballots are ultimately  
4       counted?

5       A     It is. It's mentioned that the literature -- people who  
6       have examined the ultimate status of provisional ballots in  
7       other states show the same type of pattern. It depends on the  
8       state. Sometimes you'll get a slightly higher percentage  
9       counted. Sometimes you'll get a slightly lower percentage  
10      counted, but the literature is quite clear that most provisional  
11      ballots wind up being rejected.

12      Q     And are there additional reasons beyond people maybe just  
13      not -- I shouldn't say just, but people not being able to come  
14      back with a valid ID, an acceptable ID, why a provisional ballot  
15      might be rejected?

16      A     Well, ultimately if a provisional voter is not able to  
17      overcome the objection. All right? They might come -- some  
18      people clearly are going to vote provisionally and not bother  
19      because it's an additional step that they have to go to the city  
20      clerk's office.

21      Q     They don't sign --

22      A     That was the story today, that someone failed to sign their  
23      provisional ballot, and that's one that can't be cured.

24      Q     Even if they come back?

25      A     Even if they come back. I think Maribeth Witzel-Behl said

1           this person did come back, and because they hadn't signed it,  
2           they were unable to count it.

3           Q       And that's an impediment that's not faced by somebody  
4           casting a regular ballot?

5           A       That's correct. A regular ballot in Madison at least, we  
6           have a polling place, optical scan. You cast your ballot. You  
7           insert it into the machine, and you're done.

8           Q       Let me ask if we can put up plaintiffs' exhibit 466.  
9           Actually did we already do -- wait a second. Can you take that  
10          down for a minute? Let me ask that we put up 465, please,  
11          plaintiffs' exhibit 465. Can you explain what this represents?

12          A       Because I had information on each individual voter, for  
13          about half of them, so for about half of the provisional voters,  
14          I had enough data that I could try to link them with their  
15          record in the Statewide Voter Registration System. I had their  
16          name. I had their address. And I also had that same data in  
17          the SVRS. So -- and because I had a relatively small number of  
18          matches, I could combine an automated process with a manual  
19          process to correct problems. So for about half of the  
20          registrants or half --

21                   THE COURT: Let me find out about the status of  
22                  these -- is there an objection to this exhibit?

23                   MR. JOHNSON-KARP: No objection.

24                   THE COURT: Okay. Good. That's admitted.

25                   THE WITNESS: So I matched on the first name, last

1 name, and zip code of the provisional voter. There were no  
2 duplicates on that, so each person was unique, first name, last  
3 name, zip code. And I matched them to the equivalent record in  
4 the SVRS which gave me a list of I think 163 matches. And  
5 because I also had the address of the provisional voter and the  
6 registered voter, I could go in and manually compare it and make  
7 sure that those weren't duplicated, and there were some  
8 duplicates. Sometimes there were two people with the same name  
9 and zip code in the SVRS, but the addresses didn't match, and I  
10 eliminated that. So this is the subset of people in the SVRS or  
11 the subset of provisional voters who voted provisionally solely  
12 because they had no photo ID. So I'm actually not even counting  
13 the people who voted provisionally because they didn't have a  
14 Wisconsin driver's license. I'm limiting to that first category  
15 of 288 people.

16 This is probably half of the actual number because for half  
17 of the provisional voters, the address field was blank. And so  
18 I had no way of knowing who they were, and even if they matched  
19 to someone with that same name, I didn't have any way of  
20 evaluating whether that was the same person, so I'm eliminating  
21 that. So I anticipate -- there's no reason to expect --  
22 there was no pattern to the existence of an address by county or  
23 anything else -- there's no reason to expect that to be any  
24 different. So I suspect you can reasonably double these to get  
25 the full effect.

1           And what this shows, of the 116 people who are in the SVRS  
2 who voted provisionally in April because of no photo ID, it  
3 shows that actually 59 percent of them actually have a driver's  
4 license or photo ID, and this is -- this is consistent with what  
5 other studies have shown, that a lot of people who actually  
6 possess a qualifying ID incorrectly believe that they don't, and  
7 so they -- either they don't bring it or they might have lost  
8 it, and so, you know, proportionately the people who don't  
9 possess a driver's license, that's 8.4 percent of the registered  
10 voters. We see that they're overrepresented by a factor of  
11 five, but in terms of absolute numbers, there are more people  
12 who voted provisionally for photo ID who actually possessed an  
13 ID.

14           So this is collateral damage of photo ID laws, that they  
15 prevent people who not only don't have a photo ID, there are  
16 people who actually do have a qualifying ID who believe in part,  
17 one reason -- Maribeth talked about that today -- that they  
18 mistakenly believe it has to show their accurate address or  
19 they've lost it or for whatever reason. And there are other  
20 studies that have found similar phenomenon, that there are  
21 people who believe they don't have an ID, but if you drill down  
22 and ask them about specific forms of ID that they possess, they  
23 actually do. But they are still -- they still face a burden in  
24 casting a ballot.

25           MR. SPIVA: So I'm going to move to another exhibit,

1           but before we put it up, it's plaintiffs' exhibit 466. I don't  
2       know if there's a way to put it up for the judge and not put it  
3       up on the screen.

4           THE COURT: There is.

5           MR. SPIVA: And I guess there are two issues, Your  
6       Honor. One, I wanted to see if there's an objection. This data  
7       came from the same source.

8           THE COURT: Is this up for counsel?

9           MR. KAWSKI: We're getting there. I think the iPad may  
10      have died.

11          MR. SPIVA: I have a paper copy.

12          MR. JOHNSON-KARP: If you've got one, I'll take it.

13          MR. SPIVA: Would you like a paper copy, Your Honor?

14          THE COURT: Sure. Easier to manage. Thank you.

15          MR. SPIVA: Do you want one?

16          THE WITNESS: I can't see it.

17          MR. SPIVA: That's true. That's a public monitor. So  
18       I will represent to counsel that this, you know, came from the  
19       same sources, the list of provisional ballots that GAB produced  
20       and the SVRS database, so I don't know if there's an objection.

21          THE COURT: Any objection?

22          MR. JOHNSON-KARP: No objection.

23          THE COURT: All right. 466 is admitted.

24          MR. SPIVA: Then the other issue I'll raise is just  
25       that under the protective order, this should be confidential,

1           and I don't want to waste a lot of time, you know, dealing with  
2           this now, but most of the fields in here are actually publicly  
3           available in the SVRS other than date of birth, which appears I  
4           think on the second page of the exhibit. You know, for now I'm  
5           perfectly happy to keep it off the public screen, but I just  
6           wanted to raise that issue.

7           THE COURT: The date of birth appears on the -- so this  
8           is a spreadsheet that would have many columns that would extend  
9           over pages, so the last page we have voters' names and addresses  
10          here, and it looks like the birth date appears in the last  
11          column, so I don't see any problem with -- I don't know what  
12          pages you want to show, but I don't see any problem with showing  
13          this first page.

14           MR. SPIVA: Yeah. That was my point. I don't know if  
15          there's --

16           THE COURT: That sounds good. Just don't show the  
17          third page.

18           MR. SPIVA: Yeah. Okay.

19           THE COURT: Should be some reward for hanging in here  
20          until --

21           MR. SPIVA: I don't know if that's a reward actually.

22           THE COURT: Okay.

23          BY MR. SPIVA:

24          Q       So these -- can you explain what this is?

25          A       This is the result of the matching process, and, again,

1           this is only about half of the people who actually voted  
2           provisionally because -- and for about half of the provisional  
3           votes I don't have address data, so I didn't feel comfortable  
4           even attempting to match. So these are 35 people who voted  
5           provisionally solely because they don't possess -- because they  
6           didn't possess a photo ID who show up in my original matching  
7           analysis linking the SVRS to the DOT as not possessing a  
8           driver's license or photo ID whose provisional ballots were  
9           rejected.

10           So these 35 people were unambiguously disenfranchised  
11           because they don't possess a photo ID. They had to vote  
12           provisionally because they don't have a photo ID, and their  
13           provisional ballots were rejected because they don't have a  
14           photo ID. So this is a list of 35 people, and again if I had  
15           address data for everybody, I suspect this list would be twice  
16           as large. These people were literally disenfranchised in the  
17           presidential primary.

18           THE COURT: But these people were matched in the  
19           driver's license database?

20           THE WITNESS: Well, these are people who didn't match.  
21           So the variable "no ID" indicates that they did not show up in  
22           the Department of Transportation database. So these are not  
23           people who show up as having a driver's license. So -- and  
24           because of the feature of the SVRS, I have their voter history,  
25           so I can go back and look at how many times they voted between

1           February of 2006 when the SVRS was created --

2           BY MR. SPIVA:

3           Q       Is there a column that reflects that?

4           A       There is. That's the third from the right that says  
5                   "Number of Times Voted Since 2006."

6           Q       Can we make that bigger, please? That column.

7           A       And so we can see there's one person who -- one zero. So  
8                   this is a person who had never voted prior to April -- had never  
9                   voted between 2006 and 2014. A number of people had voted once  
10                  in either 2012 or 2014, but you can see there's some people --  
11                  one person voted 10 times. One person had voted 11 times.  
12                  Another person 10 times. One person 15 times, 10, 13 times, 8  
13                  times.

14                  So these are people who had a long history of voting and  
15                  also point out that if you look at the application date, which  
16                  is the -- a blank application date signifies that these people  
17                  were in the SVRS at the point at which it was created. So these  
18                  are people who had been registered at least since 2006, and in  
19                  many cases, given their ages, there were people who were in  
20                  their 50s, 60s, 70s, and 80s on this list. Presumably people  
21                  had been voting for decades. So this is concrete evidence of  
22                  literal disenfranchisement for no other reason than the photo ID  
23                  requirement.

24           Q       Are there additional people who didn't cure their  
25                  provisional ballots even though they had a DOT ID?

1       A     There are -- I want to make one other point. So that we  
2           know that there are people who voted provisionally and whose  
3           ballots were not cured were not on this list, including the  
4           gentleman who testified earlier today. He is actually --

5       Q     Mr. Switlick?

6       A     Mr. Switlick. He's actually on the list of provisional  
7           ballots, but the address fields in that file is blank. So I was  
8           not able to link him here, and I think it's a reasonable  
9           inference that that will also be true for many of the people who  
10          do not have an address and would not be on this list.

11       Q     What would you say in terms of -- to the suggestion that  
12          this is such a small number that it really -- it just suggests  
13          kind of a hiccup with the system?

14       A     Well, if you've been voting for decades and suddenly you  
15          can't vote, that's not a hiccup to you, and that's the wrong  
16          indicator. There's no question that there are people who have  
17          been disenfranchised, and given the fact that in my view looking  
18          at the literature and in the view of most, if not all, political  
19          scientists who have looked at this issue, that there's no reason  
20          for these laws. They don't cure any problem. They don't  
21          prevent anything that happens. They don't increase confidence  
22          in the electoral process. They are pure deadweight. They don't  
23          do anything except make it more difficult to vote, and in this  
24          case preventing people from voting, and so even on a pure  
25          balance of interests, we have purported yet false claims about

1           the purpose of these laws and the things that they do against  
2           actual evidence of individuals being disenfranchised, and this  
3           is the tip of the iceberg.

4           That we know that there are people who voted provisionally  
5           whose ballots were not cured who are not on this list. We know  
6           that there are people who present at the polls who are given the  
7           option of a provisional ballot and who walk away. We know -- we  
8           can't observe, but there is good evidence that people will fail  
9           to present. We know that there are people who have IDs who  
10          present at the polls and are given a provisional ballot which is  
11          not counted because for whatever reason they don't cure their  
12          ballots. The list -- the number of people who were  
13          disenfranchised is not 35. The number of people who were  
14          disenfranchised is at least one order of magnitude, probably  
15          several orders of magnitude, greater than this, and that's just  
16          from what we can directly observe or directly infer. That's not  
17          even making any guesses about the number of people who are  
18          ultimately deterred from even presenting at the polls.

19          Q        You've written on and studied the incidents of in-person  
20          voter fraud in the United States?

21          A        I have.

22          Q        And how does even the 35 number compare with the evidence  
23          of incidents of in-person voter impersonation fraud?

24          MR. JOHNSON-KARP: I'm going to object as beyond the  
25          scope of this expert's opinion.

1                   MR. SPIVA: I think he addressed this in his rebuttal.

2                   THE COURT: Well, point me to a hook here. I think  
3 it's an issue that has been raised, but if he's got this  
4 opinion, he should have disclosed it.

5                   MR. SPIVA: I think he cited his article -- I can ask  
6 him about it -- but on page 6 of his rebuttal report,  
7 plaintiffs' exhibit 43, he cites footnote 21, "The academic  
8 literature is virtually unanimous that the rate of vote fraud  
9 through impersonation is vanishingly small," and he actually  
10 cites one of his own articles on the issue.

11                  THE COURT: Okay. Good enough. I'll overrule that  
12 objection. Go ahead and tell me what you have to say.

13                  BY MR. SPIVA:

14                  Q     How do you think that number, the 35 disenfranchised  
15 voters, compares to the number of cases of fraud?

16                  A     Given that the number of cases of voter impersonation in  
17 Wisconsin that would be -- would have been prevented by a voter  
18 ID is for all practical purposes zero, that this vastly exceeds  
19 that. Again, Professor Minnite has written about that. I  
20 presume she will testify about that on Friday. There is  
21 virtually zero evidence of anything other than the most  
22 minuscule numbers of amounts of voter impersonation.

23                  Virtually every case of voter fraud that I have seen in  
24 Wisconsin in the course of my own work and expert witness work  
25 involves vote fraud that would not be prevented by a voter ID.

1           Felons voting improperly. People voting absentee and then at  
2           the polls. People with photo ID voting multiple times. There  
3           is -- I mean, the only reason I say virtually instead of  
4           absolutely is that there is some minuscule possibility that  
5           there might be a vanishingly small number of incidents, but for  
6           all practical purposes, the degree of voter impersonation fraud  
7           is essentially zero.

8           Q       And is there any reputable academic who has written any  
9           kind of a peer-reviewed study that argues that there is a large  
10          incidence of fraud, of in-person voter impersonation fraud?

11          A       Not what I would consider to be a credible social scientist  
12          in a credible peer-reviewed journal. It's very easy to make  
13          claims, and people make claims all the time, and you see that  
14          here. Someone who knows a guy who knows a guy who is absolutely  
15          convinced you have busloads of Chicago folks rolling into  
16          Kenosha casting fraudulent ballots. It doesn't happen, and  
17          virtually all of the peer-reviewed social science evidence is  
18          that it does not happen in anything other than the most  
19          minuscule quantities. Actually, can I talk about my article?

20          Q       Sure. I was going to ask you about it later, but why don't  
21          you go ahead.

22          A       So there have been a variety of investigations looking at  
23          prosecutions, looking at investigations, looking at forensic  
24          evidence of voting irregularities, and there are a variety of  
25          ways that it can be detected. But I and two colleagues, one who

1       is a political scientist now at the University of California-San  
2       Diego and another who is a professor of political science at  
3       Stanford, we conducted what is called a list experiment, and  
4       this is a technique that is -- that has been shown to capture  
5       evidence of illegal or stigmatizing activity through surveys.

6           The difficulty is that if you ask someone if they have done  
7       something illegal or stigmatizing, you ask people if they have  
8       committed vote fraud, people will say no, and so it's not the  
9       sort of thing that will be picked up. However, there are  
10      techniques, and this is a technique that has actually been  
11      demonstrated as being able to measure things like not only  
12      stigmatizing activity but actually has been able to detect  
13      political corruption. It's called the list experiment, and the  
14      way that it works is we present a group of respondents, people  
15      in a survey -- this was an online survey -- we present them with  
16      a list of activities, say five activities, some of which are  
17      innocuous, some of which are still innocuous but have lower  
18      probability.

19           So we present people with the list of five activities  
20      related to politics, and we ask them, how many of these things  
21      have you done? We don't ask which ones. We say, how many of  
22      these things have you done? And some of the options, I voted in  
23      the last election. I contributed to a political candidate. I  
24      attended a rally. I talked about politics with my friends. And  
25      it gives us an estimate of how many things people have done.

1           And then for the treatment group we present people with the  
2 same list, but we add the activity that we're actually trying to  
3 test for. So in this case it was I voted in someone else's name  
4 in a recent election, and we don't ask them how many -- don't  
5 ask them which of these things have you done. We ask people how  
6 many, and you can compare the number -- the average number in  
7 the treatment and the control group to see if there's a  
8 difference, and if there's a difference, it suggests that the  
9 treatment question is picking up people who are picking that  
10 option because all the other five options are the same.

11          And so we did this, and we found that there was no  
12 difference. In fact, the average number of people in the  
13 treatment group is actually a little bit lower, as I recall. So  
14 based on this technique, there was no difference. There was no  
15 detectable levels of voter impersonation. However, we did have  
16 a small number of respondents who said that they had done all of  
17 these things, which would indicate, well, if that's true, that  
18 suggests that they actually do -- they have committed vote  
19 fraud. We had reason to believe that's not what happened  
20 because this was an online survey, and we could actually track  
21 how long people took in each question, and so there were people  
22 who went through and basically clicked the same answer in all to  
23 get their \$3 from Survey Monkey or whatever they got for  
24 completing the survey.

25          And so we had reason to believe that this was not a real

1           thing, but we wanted to be sure. And so we conducted a  
2           second -- actually two other list experiments. One was a list  
3           experiment that was actually looking for evidence of a  
4           stigmatizing activity. So we did an experiment where the  
5           treatment -- it was five innocuous activities. I floss my  
6           teeth. I received a phone call from a telemarketer and so  
7           forth, and then for the treatment group --

8           Q       Everybody lies about the flossing question.

9           A       Everybody lies about the flossing. The treatment was, I  
10          text while I drive, which is illegal in a lot of states,  
11          stigmatizing. We actually found that basically 25 percent of  
12          people in the survey admit to texting while driving, which is  
13          actually consistent with data that you see from the National  
14          Highway Traffic Safety Administration, the National Insurance --  
15          whatever the group does that does the crash tests. So we were  
16          confident that we actually were picking up stigmatizing  
17          activity.

18           The second additional list experiment is that we asked for  
19          five innocuous activities, but the treatment was, I have been  
20          kidnapped by aliens, which we took as a phenomena that does not  
21          happen. And we found that there are actually more people who  
22          say that -- there's more evidence that people have been  
23          kidnapped by aliens than there is of voter impersonation. So  
24          all these things taken together is just an additional piece of  
25          evidence which is consistent with all the other good evidence

1           that levels of -- that there is no material amount of voter  
2 impersonation.

3       Q     Or there's a lot more alien abductions.

4       A     As we put it in the article, if that's true, we have much  
5 bigger problems.

6           THE COURT: That's probably a good breaking point for  
7 us. We might as well keep going until midnight, but we have to  
8 have a court reporter who remains conscious through the whole  
9 time. So we'll call it a night here. I forgot to check my  
10 calendar for tomorrow so that I can give you a heads-up of what  
11 we're facing tomorrow. Is my calendar up over there?

12          THE CLERK: Not yet. You have an 11:00 sentencing.

13          THE COURT: All right. So -- all right. So we'll  
14 start at our usual 8:00 time. I have got the 11:00 sentencing,  
15 so it's kind of sort of an early lunch. So we'll have to take a  
16 break from 11:00 until 12:30, so we will resume at 12:30. Early  
17 lunch. I promised this before and didn't really make good on  
18 it, but since that's a long afternoon session, we'll probably  
19 try to work in two afternoon breaks. That's our trajectory for  
20 tomorrow. I will see you tomorrow at 8:00.

21          MR. SPIVA: Thank you.

22          MS. WILSON: Thank you, Your Honor.

23           (Proceedings concluded at 6:05 p.m.)

24           \*\*\*

25

1           I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit  
2        Reporter in and for the State of Wisconsin, certify that the  
3        foregoing is a true and accurate record of the proceedings held  
4        on the 18th day of May, 2016, before the Honorable James D.  
5        Peterson, U.S. District Judge for the Western District of  
6        Wisconsin, in my presence and reduced to writing in accordance  
7        with my stenographic notes made at said time and place.

8           Dated this 1st day of June, 2016.

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/s/ Jennifer L. Dobbratz

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Jennifer L. Dobbratz, RMR, CRR, CRC  
Federal Court Reporter

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